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In The

Supreme Court of the United States

October Term 1964 5

EASTERN AIR LINES, INCORPORATED and
NATIONAL AIRLINES, INCORPORATED,

Petitioners,

—v.—

NORTHEAST AIRLINES, INCORPORATED and
THE CIVIL AERONAUTICS BOARD,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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INDEX TO APPENDIX

PAGE

Order dated October 17, 1963 1

Order dated November 6, 1963 3

Opinion on Remand by C.A.B. Board dated December 1, 1964 5

Appendix A—Excerpts From the Initial Decision of W. W. Bryan in the New York-Florida Renewal Case 67a

Appendix B—On-line Origin and Destination Passengers in Both Directions for Selected City Pairs—1962-1963 .... 119a

Appendix C—Selected Financial Data for Northeast and Eastern Calendar Year 1963, 12 months ended March 31, 1964 and First Quarter 1964 .... 123a

Appendix D—History of Multiple Authorizations in City Pairs Cited by Northeast (Other than East Coast-Florida Markets) 124a

Order dated December 1, 1964 161

Certificate of Public Convenience and Necessity (as amended) for Route 27 .... 162a

Opinion and Order on Reconsideration dated March 5, 1965 .... 167a

Order of Court of Appeals, First Circuit, dated April 13, 1965 .... 188a

PAGE

Order of Court of Appeals, First Circuit, dated April 13, 1965 ... 190a

Opinion of Court of Appeals, First Circuit, dated April 13, 1965 ... 191a

C.A.B. Order E-22084 (April 26, 1965) ... 198a

Order of Court of Appeals, First Circuit, dated April 28, 1965 ... 202a

Opinion of Court of Appeals, First Circuit, dated May 11, 1965 ... 204a

Order of Court of First Circuit Court of Appeals dated May 11, 1965 ... 208a

United States Court of Appeals

FOR THE FIRST CIRCUIT

No. 6220.

NORTHEAST AIRLINES, INC.,
Petitioner,

—v.—

CIVIL AERONAUTICS BOARD,
Respondent.

Order of Court, dated October 17, 1963

Upon consideration of (1) motion of Eastern Air Lines, Inc., for leave to intervene, (2) motion of Master Executive Council of Northeast Pilots for leave to intervene, (3) motion of Master Executive Council for leave to file memorandum and affidavit in support of motion of petitioner for stay, and the proffered memorandum and affidavit, (4) motion of International Association of Machinists for leave to intervene, (5) motion of International Association of Machinists for leave to file memorandum and affidavit in support of motion of petitioner for stay, and the proffered memorandum and affidavit, (6) motion of Eastern Air Lines, Inc., for leave to oppose motion of petitioner for stay, and the proffered memorandum and affidavit, (7) motion of National Airlines, Inc., for leave to intervene, (8) motion of National Airlines, Inc., for leave to file memorandum in opposition to the motion for stay and the proffered memorandum and affidavit, (9) petitioner's memorandum in opposition to the motions to intervene of Eastern Air Lines, Inc., and National Airlines, Inc., (10) motion of petitioner for leave to file reply to answer by respondent to motion for stay, and the proffered reply, (11) motion of National Airlines, Inc., for leave to file answer to petitioner's motion for leave to file a reply, and the proffered answer; and (12) motion of Eastern Air Lines, Inc., for leave to file memorandum in opposition to motion of petitioner for leave to file reply, and the proffered memorandum,

It is ordered that the aforesaid motions for leave to intervene generally be, at this stage, and the same hereby are, denied; and further

It is ordered that the remainder of the aforesaid motions be, and the same hereby are, denied.

By the Court:

/s/ Roger A. Stinchfield,
Clerk.

[cc: Messrs. Fordham, Wanner, Wait, Rooney and Hanify.]

Order of Court dated November 6, 1963

UNITED STATES COURT OF APPEALS

For the First Circuit

No. 6220

Northeast Airlines, Inc.,
Petitioner,

—v.—

Civil Aeronautics Board,
Respondent.

November 6, 1963

Upon consideration of motions of National Airlines, Inc., and Eastern Air Lines, Inc., for reconsideration of the order of this Court of October 17, 1963, denying leave to intervene, and of memoranda in support thereof and in opposition thereto, and

Treating said motions as alternatively seeking leave to file briefs amici curiae,

Order of Court dated November 6, 1963

Leave is hereby granted to said movants herein to file briefs amici curiae pursuant to Rule 23(10) of the Rules of this Court, and the motions are otherwise denied.

By the Court:

/s/ Roger A. Stinchfield,
Clerk.

[cc: Messrs. Fordham, Wanner, Rooney and Wait.]

Opinion on Remand

UNITED STATES OF AMERICA

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 1st day of December, 1964

NEW YORK-FLORIDA RENEWAL CASE } Docket 12285 *et al.*

By BOYD, Chairman:

This proceeding was commenced to determine whether the public convenience and necessity require renewal of Northeast's temporary authority to operate beyond New York to Miami, via Philadelphia, Baltimore, Washington, Jacksonville, St. Petersburg, and Tampa.[1] On August 15, 1963, the Board issued its Opinion and Order E-19910, denying Northeast's application (and all other applications consolidated into the proceeding). Petitions for reconsideration were denied by Order E-20073 (October 8, 1963).

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[1] In addition to Northeast's application for renewal of its Florida authority on a permanent basis, the present proceeding includes applications of Braniff, Delta, and Pan American for authority to operate directly between East Coast cities and Miami in the event Northeast is not renewed; an application of Delta for removal of the certificate restriction which prevents it from providing single-plane service between northeast points and Miami, via Atlanta; and an application of Allegheny for nonstop authority in the New York-Washington, New York-Baltimore, and Baltimore-Philadelphia markets.

Northeast filed a petition for judicial review with the United States Court of Appeals for the First Circuit. On May 8, 1964, the Court filed an opinion and decree setting aside the Board's orders and remanding the case to the Board for further proceedings consistent with the Court's opinion. *Northeast Airlines* v. *Civil Aeronautics Board,* 331 F.2d 579. In the meantime, the Court retained jurisdiction.

The Court's remand by its terms directs only further consideration of the case by the Board and a new opinion free of the deficiencies which the Court found in our prior opinions. Nevertheless, in view of the fact that the Board must act in accordance with the over-all public interest and consistently with customary practice when a case is remanded by a reviewing court, we invited the views of the parties as to "the action which the Board should take and/or the procedures which it should follow in this remanded proceeding. . . ."[2] Pursuant thereto, statements of position and answers thereto have been filed by a number of parties.[3] The positions taken range from Philadelphia's unqualified contention that further hearings are necessary (a view shared by no other party) to that of Delta, Eastern, and National that no more is required

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[2] Order E-20814 (May 13, 1964). Statements of position were to be filed within 20 days and answering statements within 10 more days.

[3] Statements of position and in some cases answers thereto have been filed by Allegheny, Delta, Eastern, National, Northeast, State of Maine, State of New Hampshire, Commonwealth of Massachusetts, Massachusetts Port Authority, New England Council, Bangor Chamber of Commerce, Greater Portland Chamber of Commerce, City of Philadelphia, Chamber of Commerce of Greater Philadelphia, Board of County Commissioners of Broward County, International Association of Machinists, Master Executive Council of Northeast Pilots, and the Bureau of Economic Regulation.

(or appropriate) than a new opinion curing the deficiencies that the Court found in our earlier opinions.[4]

Northeast, joined by a few others, including the labor groups, takes the position that under the "standards" laid down by the Court of Appeals the present record will support only a conclusion that the public convenience and necessity require three-carrier service in the East Coast-Florida market and that Northeast should be selected as the third carrier. It urges the Board to issue a new decision granting its application. Failing that, Northeast says, the record must be reopened for further hearings with respect to such matters as renewed traffic growth, experience where two-carrier competition has existed since the Board's decision, and changes in Eastern's and Northeast's condition.

We disagree with Northeast's contention that the Court laid down "standards" which preclude denial of its application on the basis of the present record. The Court specifically declined to determine whether the record is legally sufficient, stating that it was uncertain as to the basis for denial of the application. Nor do we believe that reopening of the record is required as a matter of administrative discretion. The present record is well documented and sufficiently current. It contains actual operating experience through the first quarter of 1963.

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[4] The Bureau agrees that this would be consistent with the terms of the Court's remand, but suggests that it would be preferable to receive additional briefs, supplemented by any new factual data they deem relevant, and to hold further oral argument before issuance of a new decision. Most of the other parties agree that no further hearings are necessary and state in effect that the Board should further consider the issues on the basis of the present record and resolve them through issuance of a new opinion. A number of these parties continue to urge that the Board should decide in Northeast's favor.

The evidence has been thoroughly analyzed by the parties, and the legal and policy issues involved have been fully explored. Moreover, the Board has before it and may properly consider statistical reports filed by the carriers since the formal closing of the evidentiary record and other stipulated materials. As hereinafter appears, these latter materials do not in our opinion indicate sufficient change in circumstances to warrant reopening. Accordingly, we conclude that there is presently before the Board a firm basis for decision and that we should proceed directly to a final decision in this case.

The Court's basic difficulty with our decision appears to have been its uncertainty as to the basis for our conclusion that the public convenience and necessity do not require renewal of Northeast's New York-Florida authority. More particularly, the Court was uncertain whether that conclusion rested solely upon the finding that authorization of a third carrier on the route is not needed or whether, as Board counsel put it, in language quoted by the Court, the conclusion also rested "on grounds peculiar to Northeast's own application." While we explicitly stated in our opinion denying reconsideration that "irrespective of need for some third carrier the grant of the application of Northeast is not in the public convenience and necessity," a majority of the Court felt that this contradicted our earlier statement that we were not passing on "the technical question of fitness."[5] Accordingly, the

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[5] In a concurring opinion, Judge Aldrich disagreed with the majority as to the basis for the Board's conclusion. In his view, the language in our opinion denying reconsideration "stated sufficiently explicitly, as an alternative ground, not that Northeast was unfit, but that selection of Northeast would not be in the public interest." He felt, however, that this contradicted the "apparent tenor of, and, indeed, express statements in, [the Board's] opinion," and that it was an "attempted patchwork afterthought . . . not worthy of present attention."

Court disregarded it and analyzed our subsidiary findings upon the premise that "lack of need for a third carrier in the market was the sole basis" of our conclusion. Some of them were found wholly irrelevant. Others, while admittedly relevant, were found inadequate for other reasons.

We have carefully reviewed our decision in the light of the Court's opinion. While we adhere to the ultimate conclusion that renewal of Northeast's New York-Florida authority is not required by the public convenience and necessity, the Court's mandate requires that we articulate our rationale more precisely and, to some extent, that we elaborate on our findings. Accordingly, this opinion constitutes a complete recast of our decision in this proceeding.[6]

Under Section 401, the standards for certification are that the transportation covered by the application is required by the public convenience and necessity and that the applicant is fit, willing, and able. Our prior opinions in this case left the majority of the court uncertain as to whether the Board "passed on Northeast's fitness as well as on the need for a third carrier in the market". Moreover, it appears that uncertainty may also have been created by the use of the word "need" in relation to the Board's conclusion that there is no need for a third carrier. Accordingly, we turn first to our conception of the standards established by Section 401 and their relation to each other.

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[6] To the fullest extent possible, however, we have repeated in *haec verba* the discussion contained in our two prior opinions. Since this constitutes a complete rewrite of our decision, we again attach those portions of the examiner's initial decision which we adopt as our own.

When the Board finds that the public convenience and necessity does not require the grant of an application under Section 401, it does, in a sense, find that there is not "need" for the proposed operation. In short, that which is not required is not needed. It does not follow, however, that this means only that there is not a need for service for the traveling public (hereinafter called "service need") between the points for which certification is sought. The convenience-and-necessity standard is not so limited. On the contrary, it is clear from the congressional declaration of policy in Section 102 that the need for an economically sound over-all air transportation system is no less an element of the public convenience and necessity than is service need, and the Board has always so construed the statutory standard.[7] Thus, as the Board said in the *Great Lakes-Southeast Service Case,* 27 C.A.B. 829, 890 (1958), a standard issue in any proceeding under Section 401 is whether the applicant's proposed service "could be operated economically," and a finding that it could not has been found to justify the conclusion that the public convenience and necessity require denial. *South Texas Service Case,* 11 C.A.B. 716, 741 (1950).[8]

The principal standards which the Board has followed were formulated in the earliest decisions made by the

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[7] Indeed, the Court of Appeals for the District of Columbia Circuit has held that "all the policies of a regulatory statute become elements of the public interest to be weighed in a certification proceeding." *Continental Southern Lines* v. *Civil Aeronautics Board,* 197 F.2d 397, 400 (1952).

[8] In the latter case, the Board said:

> "The operation proposed by Val-Air shows no prospect of being economically sound. . . . To approve the proposal of Val-Air would mean the creation of an economically unsound unit in the country's air transportation system. The public convenience would not be served thereby and accordingly the application of Val-Air should be denied."

Board pursuant to the Civil Aeronautics Act of 1938 and have remained essentially unchanged since that time. In one of the earliest opinions commenting on the standards to be observed in disposition of new route applications, the Board stated (*United A.L., Red Bluff Operation*, 1 C.A.A. 778, 779, 780 (1940)):

> ". . . the primary questions to be considered are, in substance, whether the new service will serve a useful public purpose, responsive to a public need; whether this purpose can and will be served as well by existing lines or carriers; whether it can be served by the applicant with the new service without impairing the operations of existing carriers contrary to the public interest; and whether any cost of the proposed service to the Government will be outweighed by the benefit which will accrue to the public from the new service. Whether inauguration of the proposed operation herein considered is in the public interest must be determined with these considerations in mind."

It is apparent from these standards that the service can and will be denied notwithstanding a "public need" or service need where the purpose of the application can be served as well by existing carriers, where diversion from existing carriers is so substantial as to be contrary to the public interest, or where the cost to the Government is excessive in relation to the benefits of the new service. Although the question of cost to the Government is no longer present in most trunkline cases, the question still remains whether the service is economically sound and whether self-subsidization of the carrier from revenues derived from other portions of its system will be excessive in relation to the public benefits of the proposed service.

In the light of the foregoing, it is obvious that the Board must take into consideration facts and circumstances peculiar to the particular carrier in determining whether the public convenience and necessity require grant or denial of its application. As the Board said in the *South Texas Service Case, supra,* "the status and proposal of each applicant, and necessarily the selection of a carrier, must be weighed in deciding which service, *if any*, is required by the public interest" (11 C.A.B. at p. 741, emphasis added). In other words, the principal issue in a proceeding such as this is not simply whether there is a service need, but whether, apart from service need, there is a "need" for operation by a particular carrier in terms of the other elements of the public interest embodied in the broad convenience-and-necessity standard. Numerous examples could be given to illustrate the need and indeed the inevitability of using this approach. It is apparent that in the case of a marginal proposed route, for example, not only the selection of carrier but the ultimate finding of public convenience and necessity may turn on the greater ability of one of several applicants to "integrate" (in terms of the traffic convenienced, costs experienced, etc.) the proposed operations into its existing system. In short, a particular service may be required by the public convenience and necessity if it is operated by one carrier, but not so required if operated by any other carrier.[9]

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[9] In this connection it is pertinent to note that Section 401(d) of the Act requires the Board to hear and dispose of *applications*, rather than route or area proceedings, and the findings required must relate to applications. However, the Board normally consolidates similar route applications for reasons of administrative convenience and the requirements of comparative consideration (*Ashbacker*). Although Section 401(d) is directed to the disposition of applications, the Board has considered that it is not precluded, in appropriate cases in which several applications for the

A corollary to this rationale is that denial of a certificate application on grounds peculiar to a particular applicant does not necessarily involve a determination respecting the applicant's "fitness." Thus, in the example given above in which operations by a given carrier are found to be economically unsound for the reason that they do not integrate logically with operations over the carrier's existing route structure, the public interest in an economically sound air transportation system may dictate denial of the application despite the fact that the carrier has the basic qualifications (money, equipment, know-how, etc.) to carry on the operations. Many an applicant under Section 401 has lost out to some other applicant on such grounds without being found unfit. See, *e.g., Arizona-New Mexico Case*, 9 C.A.B. 85, 99-100 (1948); *Service to Toronto*, 12 C.A.B. 305, 321-322 (1950); *Route 26, Interim Local Service Investigation*, 24 C.A.B. 708, 711 (1957); *Southeastern Area Local Service Investigation*, 30 C.A.B. 1318. 1336-1339 (1959), aff'd, *Southeastern Aviation* v. *C.A.B.* 283 F.2d 189 (C.A.D.C. 1960).[10] Technical fitness and an

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same route have been consolidated, from determining first whether a proposed new route is in the public convenience and necessity irrespective of the applicants therefor, and thereafter selecting a carrier to operate the route. See, *e.g., Southeastern States Case*, 7 C.A.B. 863, 887-902 (1947), *aff'd, Civil Aeronautics Board* v. *State Airlines*, 338 U.S. 572 (1950). Indeed this was clearly the Board's approach in the original *New York-Florida Case* in which the Board first found that a public need for additional transportation service existed and then selected Northeast in preference to the other applicants.

[10] In the *Route 26* case, for example, North Central was preferred over Frontier because "the proposed new segment will fit more logically with North Central's system . . . thus permitting a less costly and more efficient operation." Again, in the *Southeastern Area* case, the Board denied Southeast's application primarily because the route being awarded would constitute the carrier's entire system and such a system would be too small to permit an economic operation.

economically sound operation are not the same thing.[11]

Although lack of fitness is rarely a ground for *denial* of an application, this is not to say that "comparative fitness" is not considered as a public interest factor in the selection of a carrier to operate a route *grant*. For example, where there is little or no difference between applicants on economic grounds (e.g., cost, diversion, integration, etc.), the comparative fitness of the applicants may be decisive in the selection of one carrier over another.[12] In weighing these factors, however, the Board is not passing on the fitness of the applicants—both are deemed to be fit, willing and able within the meaning of the statutory standard—but rather is evaluating their qualifications (financial strength, type and availability of equipment, management capability, etc.) to determine which applicant will best meet the requirements of the public convenience and necessity. In other words the Board is selecting the carrier which is "more fit."

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[11] In the vast majority of route cases the question of lack of fitness has not been seriously raised by any of the parties where existing certificated carriers have sought route amendments or renewals. In such cases the findings of fitness of the carrier selected are set forth only in the statutory language in the summary of findings contained at the end of the Board's opinion.

Even in the case of "new" applicants (i.e., applicants which do not hold certificates of public convenience and necessity), in denying the application the lack of fitness of the applicant has been a decisive factor in an extremely small number of cases. One such case is *NY-Chicago Service Case*, 22 C.A.B. 973, 989-991, *aff'd, North American Airlines* v. *Civil Aeronautics Board*, 237 F.2d 209 (C.A.D.C. 1956) where the application of North American Airlines was denied on both of the statutory grounds. In addition to finding that grant of the application was not required by the public convenience and necessity, the Board concluded it would deny North American's "application for the additional reason that we are unable to find the applicants 'willing' to comply with the Act and the Board's regulations as provided in section 401(d) of the Act." This was also the case in *Southeastern Area Local Service Investigation, supra.* In addition to rejecting Southeast's application on purely economic grounds, the Board found that, absent control by a surface carrier, Southeast was lacking financial fitness (and divestiture of such control was held to be essential to certification).

[12] *American Air., Chicago-Detroit Local Service,* 20 C.A.B. 565, 575-579 (1955) (The Board chose North Central, rather than Lake Central, to operate a local service route segment between Chicago and Detroit because (1) service could be provided by North Central at less cost to the carrier and to the Government, (2) service could be instituted promptly, due to North Central's better financial position, (3) North Central's ground facilities on the route in question were superior, *and* (4) the route would best integrate with North Central's system, thereby facilitating the

One more preliminary matter remains. Of course, a renewal applicant does in a sense stand in a preferred position. If its continued operations would be consistent with the other public interest elements of the convenience-and-necessity standard, the very fact that it is already present in the market might justify a decision to renew even if there were no service need (assuming always that the market would support the operation of an additional carrier). Nevertheless, the Board's inquiry in a renewal proceeding cannot be limited to whether the carrier has

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generation of new traffic); *Middle Atlantic Area Case,* 9 C.A.B. 131, 168-170 (1948) (Robinson Aviation was awarded a New York local service route over a number of other fit, willing and able applicants on the basis of a comparative consideration of these factors: (1) operational experience, (2) quality of personnel, (3) organization, (4) financial ability, (5) facilities and equipment, (6) proposed plan of operation and (7) integration into the existing route structure); *Southeastern States Case,* 7 C.A.B. 863, 896-905 (1947) (In a series of local service route awards, the following characteristics of multiple, fit applicants were compared: (1) the manner of selection and organization of personnel to conduct the proposed operation, (2) experience of key personnel, (3) geographical proximity of the applicant's base of operations to the route to be served, (4) completeness of the proposed plan of operations, (5) financial condition, and (6) quality and quantity of required equipment. The award of one of the routes in question to Piedmont Aviation was upheld by the Supreme Court in *Civil Aeronautics Board* v. *State Airlines,* 338 U.S. 572 (1950)). Similar standards were applied in *New England Case,* 7 C.A.B. 27, 40-41 (1946) and *Rocky Mountain States Air Service,* 6 C.A.B. 695, 735-737 (1946).

satisfied the condition which prompted the Board to make the award temporary in the first place. *The original certification may have been a failure for other reasons not envisioned by the Board at the time.* Obviously, concern for the public interest would preclude the Board from closing its eyes to this when renewal is sought. Accordingly, to the extent that Northeast's certificate was made temporary because of doubt that it would be able effectively to mount a competitive service, it would not be entitled to automatic renewal if it could show that it had been an effective competitor. We must consider also the other elements of the public convenience and necessity and, if they point to denial, that must be our decision regardless of Northeast's preferred position.[13]

Our prior opinions were intended to reflect this rationale and to rest our decision upon both aspects of the convenience-and-necessity standard outlined above. We found then, and we find now, that Northeast's renewal "would be contrary to our obligation to maintain and develop a sound air transportation system" because, instead of improving Northeast's operations elsewhere over its system and helping it to self-sufficiency, the carrier's extension had produced a deterioration in its New England service and insolvency, and the future prospects are for more of the same. In other words, even if there were a service need, there is no "need" for service *by Northeast* in the broader sense that its authorization would be inconsistent with the other public interest considerations embodied in the convenience-and-necessity standard. *Accordingly, we would deny its application even if there were a need for service by a third carrier. Moreover, and to remove all doubt, we regard these findings as fully and completely dispositive of Northeast's application. We also find that the public convenience and necessity do not require the certification of any other third carrier in the East Coast-Florida market.*

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[13] In this connection, we note the original dissenting opinion's reference to such cases as the *Transpacific Air Renewal Case,* 21 C.A.B. 253 (1955) and the *Large Irregular Air Carrier Investigation,* 28 C.A.B. 224 (1959), to the effect that continued operation by an existing carrier "is convincing if not conclusive proof of the ability to operate satisfactorily". The findings in these cases referred to by the minority deal with fitness and ability, not with the issue of the public convenience and necessity.

We also found in our prior opinions that return to two-carrier competiton would have a beneficial effect upon Eastern. While this is no doubt true, it plays no part in our decision not to renew Northeast.

We now turn to a detailed discussion of the reasons for our decision.

I.

As indicated earlier in this opinion, the development and maintenance of an economically healthy air transportation system is a primary objective of the Act and must be taken into consideration in assessing the requirements of the public convenience and necessity. Whatever relevance Northeast's experienced results and future prospects may have to the question of service need (and the Court held that they have none), they are plainly relevant in this context, and, in our judgment, they compel the conclusion that Northeast's certification clearly would not meet this test. As hereinafter set forth in detail, its operations under the temporary certificate have led the carrier to economic ruin and, moreover, this has been accompanied by deterioration in its service in New England. Since we find no reasonable prospect that future operations by Northeast in the East Coast-Florida market would become financially successful, renewal would merely perpetuate a fundamentally and seriously uneconomic situation. In these circumstances, renewal would be inconsistent with the requirements of the public convenience and necessity because, as we said in our first opinion in this case, it "would be contrary to our obligation to maintain and develop a sound air transportation system," and, accordingly, as we said in our opinion on reconsideration, "irrespective of need for some third carrier the grant of the application of Northeast is not in the public convenience and necessity."

If one thing stands out in bold relief in this case, it is that Northeast's operations under its temporary certificate have led to one of the unhealthiest economic situations in the trunkline industry. With the exception of more recent figures than were available at the time of our prior opinions, figures to which we shall advert shortly, there is little that can or need be added to what we said on this point in our earlier opinions and which is repeated here. Instead of the predicted profitable operations and economic stability upon which the Board primarily based its determination in 1956 that operation by Northeast was required by the public convenience and necessity, the carrier incurred heavy losses for each year, completely depleted its own resources, and by the Fall of 1961 was unable even to meet its daily operating expenses. The carrier's 1956 earned surplus of $831,000 had been converted into a retained loss of approximately $43,900,000 by the end of 1962. During the same period its stockholders' equity decreased from a positive $11.9 million to a negative $32.8 million.

The carrier has existed in an almost constant state of acute financial crisis, and but for the assistance of Hughes

Tool Company (Toolco) and the forbearance of its creditors could not have survived. The facts regarding Northeast's worsening financial condition since its extension to Florida are set forth in detail in both the *Toolco-Northeast Control Case*[14] and the examiner's decision here and need no further elaboration.

It is also apparent that the Florida extension did not improve Northeast's seasonal problem, but rather aggravated it. The competitive types of equipment—jets, DC-6B's, and Viscounts—which Northeast needed in the Florida and the short-haul commuter markets were not suitable for its local service routes in New England. Instead of the anticipated seasonal integration of its services in New England with its Florida operations so as to achieve better utilization of equipment and more economical operations, Northeast has used large four-engine equipment in its local New England services thereby resulting in an even more costly local operation for the carrier.[15]

Of course, our primary concern in this proceeding is with the future but, in our judgment, Northeast's long-term historic experience is a reasonable index of the future. We find nothing in this record which convinces us that Northeast's operation could be expected to be economic over an extended period of time. In this connection, we note that during the hearings and on brief to the examiner, Northeast predicted a 1963 system operating profit of some $3.9 million.[16] We stated, however, that "it is obviously unreasonable to expect that Northeast, which has lost millions of dollars each year since its Florida extension and as recently as 1962 incurred a system operating loss of over $6.3 million, could so drastically reverse experienced results in one year as to turn these losses into an operating profit of nearly $4 million."[17] We agreed with the examiner that 1963 would be another year of substantial operating losses, to say nothing of the carrier's heavy nonoperating expenses such as interest on debt.[18]

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[14] Order E-18470, June 19, 1962.

[15] Nor has Northeast improved its services within New England to any substantial extent as had been expected when it was certificated in 1956. While the use of large four-engine equipment instead of the DC-3's previously used undoubtedly constituted a service improvement for some New England cities in terms of passenger comfort, Northeast has reduced frequencies in many of its New England markets and provides less service in some of them today than it did in 1956. Nor have Northeast's one-carrier services between its exclusive New England cities and Florida developed any significant number of passengers. Whereas Northeast's estimate of 1956 traffic in these markets was 28,640 (24 C.A.B. at p. 168), in 1961 the total single-carrier traffic in these markets amounted to only 7,070 passengers, or 10 passengers a day in both directions (BER-201A).

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[16] NEA-1003, 1008 (Revised).

[17] Not only past experience but the overly optimistic nature of Northeast's forecasts throughout this proceeding precluded our acceptance of the carrier's predictions. In its original exhibits in this case, which were based on a 1962 forecast year, Northeast predicted a system operating profit of $4.6 million. That forecast was later revised in the light of actual operating results for the first six months of 1962 to a forecast operating loss of $4.2 million. 1962 year-end results contained in the carrier's Form 41 reports revealed the $6.3 million loss referred to above.

[18] The examiner prepared two estimates based on different predicted direct operating costs. Using Northeast's experienced revenue passenger miles for 1962, as increased to reflect growth, he estimated a 1963 system operating loss for Northeast of $3.7 million under one computation and $4.8 million under the other. By the time the case reached the Board, the principal thrust of the carrier's argument was not that its 1963 estimate of profitable operations is reasonable, but rather was that the examiner's estimated operating loss of $3.7 million is overstated. Northeast, using an annualization of its reported results which reflect the higher traffic participation and lower operating expenses during the first quarter of 1963 as compared to its historic experience, and after adjusting downward the examiner's estimated costs to reflect his lower predicted traffic volume, argued that the examiner's estimated 1963 operating loss of $3.7 million should be reduced to $2.2 million.

The actual results for 1963 and the first quarter of 1964 are now available and they fully corroborate our judgment (Appendix C). During 1963 Northeast suffered an operating loss of $8,643,000, almost four times what Northeast ultimately predicted it would be. Nor does this figure tell the whole story. Subsequent to issuance of the order denying Northeast's application to continue operations south of New York, the Board established a subsidy rate for its operations north of New York.[19] Pursuant thereto, Northeast was paid some $988,000 in subsidy during the last 3½ months of 1963. The 1963 operating loss of $8.6 million referred to above is *after* subsidy payments.[20]

Not only did Northeast have the benefit of substantial subsidy payments during 1963, but, during the last four months of the year, at least, its Florida operations were confined largely to those markets which, according to its petition for reconsideration, had been profitable, *i.e.*, New York-Miami/Ft. Lauderdale; Boston-Miami; and Philadelphia-Miami.[21] During the last four months of 1963 there was only one flight a day serving Jacksonville and

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[19] Orders E-20005 (September 13, 1963) and E-20072 (October 4, 1963). In this connection, we note again that without subsidy, and with its extension to Florida, Northeast's service to New England deteriorated. We anticipate that with subsidy, and without the obligations imposed upon it by the Florida authorization, Northeast's service to this important section of the nation will improve.

[20] It is to be noted that even *after* receipt of almost $1.0 million in subsidy, the carrier's operating loss in 1963 was $2.3 million *greater* than in 1962 when *no subsidy* was paid.

[21] In its petition for reconsideration Northeast suggested two alternatives to full and unqualified renewal of its Florida authority. One was renewal in the markets named above. The other was full renewal or partial renewal, coupled with subsidy for its New England operations.

Tampa and one daily flight between Florida and Washington and/or Baltimore.[22]

Northeast's loss trend has continued into 1964. During the first quarter, which covers the peak Florida season, it incurred an operating loss of $275,000 after payment of $794,000 in subsidy.[23] Moreover, with the exception of one daily 7-hour, DC-6 round trip between Philadelphia, Baltimore, Washington, Jacksonville, Tampa, and Miami during January, its Florida service was confined to the three allegedly profitable markets. Such a showing during the peak winter season is a strong indication that Northeast cannot hope to achieve an economic operation over an extended period.[24]

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[22] Source: Official Airline Guide, World Wide Edition, for September, October, November, and December, 1963.

On December 24, 1963, the Board granted Northeast's application for authority to suspend service in all but the three markets (Order E-20298). Plainly, however, the carrier had for all practical purposes already done so prior to issuance of the suspension order.

[23] This is to be contrasted with an operating loss of $47,000 during the first quarter of 1963 when no subsidy was paid. We recognize that publication of our decision in this case may have had some depressing effect on Northeast's traffic during the latter part of 1963 and the first quarter of 1964. We doubt, however, that this was significant in view of the Court's action on Northeast's petition for an interlocutory stay of our order in October of 1963. The Court stayed our order at least until April 29, 1964, thereby permitting Northeast to continue its operations at least through the 1963-1964 winter season. Moreover, we note that Northeast's traffic in the New York-Miami and Philadelphia-Miami markets was greater in 1963 than in 1962, and its percentage participation in these markets remained about the same in 1963 as it was in 1962. The decline in its traffic in the total East Coast-Florida market appears to have resulted primarily from its large decreases in the side markets from which it voluntarily withdrew toward the end of 1963. Northeast does not explain, and we fail to see, how our decision forced its withdrawal from these markets.

[24] For the year ended March 31, 1964, it suffered an operating loss of $8.8 million *after* subsidy payments of $1.7 million.

These figures bear out our former findings in rejecting the alternatives to full and unqualified renewal suggested by Northeast in its petition for reconsideration (see note *21, supra*). We said:

> "Northeast has not demonstrated that even if it confined its service to a few selected markets, as proposed in its first alternative, its operations would be profitable. The record does not so show, and Northeast's bare assertions do not support its optimistic claims. . . . Nor do we find that the carrier has established that its operations, whether under a full or partial renewal, would be profitable even if its New England services were subsidized."

On the basis of actual operating results which, in practical effect, embody both alternative proposals, we reaffirm our rejection of them.[25]

In our prior opinions we pointed out that Northeast was also strapped by heavy nonoperating expense, such as interest on debt. Since then its position on this score has improved. According to its report as an affiliate of an air carrier filed on March 10, 1964 pursuant to Part 246 of the Economic Regulations, Toolco canceled outright on January 18, 1964 promissory notes of Northeast aggregating some $16 million of indebtedness, and, as part of a trust indenture, dated October 6, 1964, which purports to divest Toolco of control of Northeast, Toolco has released Northeast from liability for interest acccruing after September 30, 1964 on outstanding indebtedness. Nevertheless, Northeast's obligations to Toolco remain substantial.[26] In any event, this action by Toolco would not in our judgment alter the likelihood of continued unprofitable operation. Moreover, its ability to withstand continued operating losses is not assured by Toolco's conditional commitment in the trust indenture to provide limited cash additions to the trust corpus for the purpose of loans by the trustee to Northeast.[27]

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[25] Further the Board's policy from the first days of the Civil Aeronautics Act has been to bend every effort to create a subsidy-free trunkline system. Having achieved that goal, it would be a large step backward to authorize a trunk route which could not be operated without subsidy. We believe this would be contrary to the public interest. To be sure, Northeast is at the moment receiving subsidy for its New England operations. These, however, are essentially local service operations, and we awarded subsidy prior to the time Northeast obtained an interlocutory judicial stay of our decision which enabled it to continue trunkline operations south of New York.

We are aware that many factors adversely affect Northeast's operations and that some of them could be viewed as nonrecurring in nature. For example, it could be argued that Northeast's difficulties in expanding from a local, short-haul noncompetitive operator into a long-haul, competitive carrier, its financing problems, and its delay in acquiring competitive jet equipment were transitory. Moreover, the Court of Appeals suggested that there might be significance in our prior failure to mention the "disadvantages of operating under a temporary certificate" and in failing to answer the views of the minority that this factor and the so-called "cutthroat" competition of

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[26] Principal and interest accrued thereon totaling almost $24 million, together with 973,226 shares of Northeast common stock, comprise the corpus of the trust established by the indenture of October 6, 1964.

[27] Under the trust indenture, Toolco would advance cash to the trustee for such purpose if the corpus lacked sufficient funds and if agreements were obtained from certain other creditors to subordinate their claims to that created by the loan. The indenture also provides that the unpaid principal amount of other loans made by the trustee, plus unpaid rentals accruing after September 30, 1964 under an aircraft lease between Northeast and Toolco and the proposed loan may not aggregate more than $3 million unless the trustee or Northeast had entered into a transaction requiring Board approval under Section 408 of the Act.

Eastern had contributed significantly to Northeast's lack of success. We cannot attribute Northeast's failure to any of these factors.

Northeast's certificate was for a five-year period and it has in fact been operating under it for about eight years. In our judgment, this was time enough for the carrier to effect the necessary transition in the nature of its operations and still provide a reasonable test period within which to assess the results of the new operation. We recognize that operations under a temporary certificate may have had some adverse effect upon the carrier's financing and consequent ability to obtain new equipment, and that it might have acquired new equipment sooner on better terms had the certificate been a permanent one. However, the facts remain that Northeast inaugurated jet services beginning in 1959, and that the carrier has never been able to meet its operating expenses.[28]

Neither are we impressed with the charges respecting Eastern's so-called "cutthroat tactics" by increasing its nonstop New York-Miami capacity during the first quarter of 1962.[29] To be sure, there was included in the portions of the examiner's decision attached to our original opinion the statement that "the addition of the 'fighting ships' by Eastern at that particular time was to reduce the load factors of all carriers in the market just prior to the hearing in this proceeding and further to weaken Northeast's position." We did not, however, intend this as a finding that Eastern's conduct was the product of an unlawful predatory intent. As we read it, the examiner's use of the expression "fighting ships" was simply a reference to Northeast's characterization of Eastern's action. To remove all doubt on this point, we have deleted the examiner's discussion of it from the portions of the initial decision which we adopt, and will separately state our own views.

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[28] It may be observed that Northeast introduced jet service in the New York-Miami market before Eastern.

[29] On February 6, 1962, Eastern increased its New York-Miami jet nonstops from 10 to 14 daily flights, utilizing two DC-8's leased from Pan American.

We find no basis in the record for concluding that Eastern's addition of capacity was an unfair competitive practice. It may be conceded that all three carriers experienced lower load factors during the first quarter of 1962 than during the same period of 1961 and that in this sense Northeast was further "weakened." [30] This does not mean that the addition of the capacity was a "cutthroat tactic." On the contrary, the record indicates that the decision to increase capacity was made in response to an increase in New York-Miami traffic during the preceding several months and in the belief that the additional capacity was not only justified but needed.[31] Indeed, it is to be noted in this connection that during February 1962 Eastern's New York-Miami load factor was 71.5 percent, and Northeast's president conceded that this did not indicate "over-scheduling" (Tr. 625). Moreover, he also conceded in effect that Northeast's New York-Miami load factor during the same month was a "healthy, satisfactory" one, albeit lower than during February 1961 (Tr. 624). In these circumstances, we see no reason to question Eastern's position that the addition of this capacity was not a "cutthroat tactic" but a legitimate business judment as to the appropriate number of flights based upon its appraisal of the traffic trend.[32]

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[30] Northeast's president testified, however, that the carrier showed a profit during the 1961-1962 winter season, about the same as in the 1960-1961 season (Tr. 629).

[31] Tr. 3008-3009; NEA Exh. E-6 and E-7.

Even if Eastern's addition of this capacity had been unfair, the record does not support any conclusion that it was a significant factor in Northeast's failure to achieve profitable operations. As previously indicated, its president testified that Northeast showed a profit on its operations in this market during the 1961-1962 winter season. Moreover during the first quarter of 1963 Northeast's participation in the total New York-Miami traffic rose to 23.7 percent despite the fact that Eastern was operating a pattern of service comparable to that operated during the first quarter of 1962, and its participation in the total East Coast-Florida market was 25.5 percent.[33] Even so, Northeast sustained a system operating loss for the quarter. In the light of these facts, Northeast's failure to achieve profitable operations cannot be attributed to Eastern's scheduling practices.

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[32] It is true that the New York-Miami load factors of all three carriers dropped during the remaining two months of the winter season (Tr. 623-625). This, however, does not establish that Eastern's action in introducing the additional service was not based upon legitimate considerations rather than upon any predatory intent. At most it indicates that Eastern's judgment was overly optimistic. Continuation of the use of the two aircraft for the remaining two months of the winter season does not support a charge that Eastern was waging an unfair campaign against Northeast.

In this over-all connection, we note that while this case was pending Northeast filed a complaint against Eastern alleging violations of Section 411. Its complaint was based upon, among other things, the so-called "cutthroat tactics" here asserted and, in support of it, Northeast marshalled evidence from the record in this proceeding. We dismissed the complaint upon the ground, among others, that the material upon which it based the complaint failed to support the charge that Eastern's action was predicated upon an exclusionary intent in relation to Northeast. Order E-20421 (January 31, 1964), petition for review pending, *Northeast Airlines* v. *Civil Aeronautics Board,* C.A.D.C., No. 18, 511.

[33] During the first quater of 1962, Northeast's participation in the nonstop traffic was 17 percent (BER 108-B).

In our judgment, there are other and more basic factors that stand in the way of the carrier's achieving and maintaining profitable operations over an extended period of time. During the Florida off-season, Northeast has no other adequate sources of traffic revenues or other markets in which to make proper use of its jet equipment. Although Northeast's operations in New England have a peak summer season, the total traffic in this area is too small to compensate for the loss of revenue due to the traffic imbalance of the East Coast-Florida route.[34] Northeast's route system north of New York and its Florida routes do not afford seasonal traffic compatibility, and the jets required for the long-haul operation are clearly unsuitable for New England service with its short hops and small airports.

Northeast indicated during the prior stages of this proceeding that a merger was probably the most practical of all solutions to its financial and operating problems, and in its statement of position on remand the carrier states that, should Northeast be furnished attractive opportunities for merger satisfactory to the Board, it should be given the opportunity to pursue this course.[35] No merger proposal has been presented to the Board, and whether one might at some undisclosed time in the future is wholly speculative.[36] Moreover, having concluded on the record in this proceeding that the public convenience and necessity does not require that the route be operated by Northeast, the Board would not be warranted in renewing it for the purpose of providing an inducement to potential merger partners.[37] We believe the sound course is to act upon the merits of route applications in accordance with the normal standards of public convenience and necessity, rather than to indulge in crystal ball gazing by attempting to create a climate which may or may not be favorable to merger proposals.

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[34] For example, in 1962 Northeast operated 39,231,280 revenue passenger miles in the New England peak third quarter and an average of 24,008,460 revenue passenger miles per quarter for the remaining quarters or a difference of 15,222,820. Yet, Northeast's Florida traffic dropped from 150,378,930 revenue passenger miles in the peak first quarter of 1962 to 114,909,200 revenue passenger miles in the third quarter (*Competition Among Domestic Air Carriers Survey for 1962*).

[35] Northeast says that the likelihood of a merger is properly before the Board and that recent events "bear on this likelihood." It refers to the alleged improvement in its debt structure, the increase in Florida traffic, additional prospects for its own strengthening (apparently a reference to a suggestion that it be awarded other new but unspecified routes), and the recent application of the Hughes Tool Company to regain its voting right to 78 percent of TWA's stock. The trust indenture of October 6, 1964 also contemplates the possibility of a merger.

In assessing the prospects for economic operation by Northeast in the future, we have considered the volume of traffic in the East Coast-Florida market. The Board's conclusion in 1956 that operation by Northeast would be economically feasible rested upon the rapid growth the Florida markets had been experiencing and the expectation that the historic growth would continue.[38] As our prior opinion shows, it did not. During the period 1957-1962 there were relatively small and erratic ups and downs from year to year, with little over-all growth, either percentagewise or in terms of actual number of passengers.

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[36] The matters cited by Northeast as having "bearing" upon the likelihood of merger are themselves speculative.

[37] Whether renewal of the route would in fact be an inducement to potential merger partners is, of course, far from clear. For all that appears on the record, carriers such as Mohawk or Allegheny might well consider it an obstacle rather than an inducement. Moreover, we cannot assume that any merger, as distinguished from other solutions of Northeast's difficulties, is in the public interest and warrants renewal of the route.

[38] The record then showed that traffic during the previous five-year period had more than tripled, and the Board predicted that it would total 3 million passengers in 1956.

The total market in 1962 was 1,762,670 passengers, some 1.3 million less than had been forcast for 1956. The 1962 traffic was only 90,000 above the 1,671,863 traffic in 1957, an average annual rate of growth of about 1.0 percent.[39] Growth in the New York-Miami market was even more dismal and New York-Miami is the key to successful operation in the East Coast-Florida market.[40] Average growth was only 0.9 percent for the 1957-1962 period and in 1962 there were only 15,000 more passengers than in 1957.[41]

Various reasons were advanced for the behavior of these markets in recent years and their failure even to approach the predictions made by the Board when it found that traffic growth would be sufficient to support an economical operation by Northeast. Thus, during the hearings and on brief, Northeast attributed it to temporary factors, such as recessions, inclement weather, and labor disputes, and it points out in its statement of position filed in response to Order E-20814 that the East Coast-Florida market has grown since the record was closed. As we said in our first opinion, such temporary factors undoubtedly have influenced market behavior, but there can be no assurance that these and other unfavorable factors will not affect it in the future. Further, again as we said before, long-range influences, such as the accessibility of other and more distant vacation spots made possible by the speed and range of jet aircraft and the diversion of traffic that formerly moved through the Miami gateway to direct nonstop services to Caribbean and South American points that are now available, will certainly continue.[42] While it is admittedly difficult to predict with accuracy what the future holds in terms of traffic growth, it is clear that the behavior of these markets between 1957 and 1962 would afford no basis for renewing Northeast on the expectation that the substantial growth of the years preceding the original award will resume.

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[39] The Board in the original *New York-Florida Case* had predicted an annual growth rate of 15 percent (24 C.A.B. at p. 222).

As we also pointed out in our prior opinion in this case, the East Coast-Florida market lagged well behind industry levels. The domestic trunklines' passenger miles increased approximately 30 percent in the period 1957-1962, in contrast with the 5.4 percent growth in Florida markets.

[40] While some of the Florida markets, such as Boston-Tampa, Boston-Jacksonville, Philadelphia-Tampa, and Philadelphia-Jacksonville, experienced a high average rate of growth, they are not large traffic-producing markets, accounting for a total of only 99 one-way passengers a day in 1962.

[41] In 1956, when the Board certificated Northeast between New York and Miami, it was the foremost travel market in the country, generating about 33 percent more passenger miles than the next largest market, Los Angeles-New York. This is not true today, and a dramatic indication of the lack of growth in this market is the fact that for the 12 months ended December, 1962 New York-Los Angeles generated 19 percent more passenger miles than New York-Miami.

We recognize that traffic statistics which have become available (Appendix B) since preparation of our original opinion show additional growth. Total on-line O & D traffic (local and connecting) in the East Coast-Florida market in 1963 was 1,767,640, an increase of 9 percent over the 1962 traffic of 1,617,650. During the same period traffic in the New York-Miami market was 973,310 as contrasted with 884,610 during 1962, an increase of 10 percent. While this is a better showing than these markets made between 1957 and 1962 when the total market averaged only 1.6 percent annual growth, and New York-Miami only 0.9 percent, we do not believe that the growth in this one year would justify our finding that a new trend has been established. This is not the first time since 1957 that these markets have shown dramatic increases in one year, only to be followed in succeeding years by large decreases or scant growth. In 1959 the total East Coast-Florida market increased 20.3 percent over 1958 and the New York-Miami market increased 22.3 percent. In 1960, however, the traffic in these markets decreased 8.5 and 8.4 percent, respectively, and in 1961 New York-Miami registered still another decrease.[43] Rather than indicating a new trend of rapid and substantial growth, we believe the recent figures, viewed in the context of the market's over-all behavior since 1957, indicate that it is subject to unpredictable and erratic ups and downs.

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[42] Passengers moving between New York and Miami as part of international trips declined 27 percent between 1956 and 1960. NEA-191 (Rev.). While New York-Miami growth rate has been low, travel between the Northeast and Caribbean points increased 77 percent between 1955 and 1960. BER-109.

We note that the passengers moving between New York and Miami as part of an international journey during the first quarter of 1963 increased almost 50 percent over the corresponding period in 1962. We do not believe, however, that this detracts from our conclusion. Such traffic in the first quarter of 1963 was 36 percent less than during the same period in 1960. (Origin and Destination Surveys for the first quarters of 1960, 1962, and 1963.)

Moreover, as we have already indicated, despite this growth and payment of almost $1 million in subsidy, Northeast's 1963 operations produced an operating loss of about $8 million. In all of these circumstances, we adhere to the conclusion previously reached that there is no basis for renewing Northeast on the expectation that traffic growth will lead it to profitable operation.

In sum, the certification of Northeast has been an economic failure, and we find nothing that, in our judgment, would warrant a conclusion that Northeast's Florida operations over a longer period hold any reasonable prospect of success. As we said in our prior opinion, the record, which shows seven years of unprecedented losses, continual financial crises, and deteriorating services in New England, leads us to the conclusion that Northeast cannot achieve self-sufficiency from its Florida routes. Northeast is wholly dependent upon the Florida markets for survival as a long-haul operator. But the carrier lacks the back-up traffic support, the strong, seasonally balanced system, and the financial stability which are essential if a carrier is to rely on the Florida vacation markets, with their erratic traffic ups and downs, for the major sources of its strength. Past industry experience would indicate that a carrier, with a limited route system and access to traffic confined to multicarrier and unpredictable seasonal markets such as these, cannot operate as economically as those with a more extensive system. We conclude that Northeast cannot achieve self-sufficiency or economic stability. We are, therefore, compelled to find that the renewal of Northeast's Florida authority would be contrary to our obligation to maintain and develop a sound air transportation system and for this reason we find that, irrespective of service need, Northeast's renewal would not be in the public convenience and necessity.

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[43] By 1962, neither the total East Coast-Florida market nor New York-Miami had generated as many passengers as in 1959.

II.

We also conclude that there is no service need for any third carrier in the East Coast-Florida market. We find that Eastern and National can and will accommodate the traffic, and that their competition will meet the statutory objective of "competition to the extent necessary to assure" development of a sound air transportation system.

Insofar as accommodation of the traveling public is concerned, we find that Eastern and National will fully meet the service needs of the public. Substantial technological changes have occurred in the air transportation industry since the Board's award of third-carrier Florida authority, and these changes have a very real bearing upon carriers' ability to satisfy service needs. The impact of the equipment of the domestic trunklines with large numbers of jet aircraft is well known. The seating capacity of these aircraft, the productivity made possible by their high speed, and the desire of management to make productive use of its huge investment in the aircraft, not only makes possible the offering of capacity far in excess of that visualized only a few years ago, but imparts pressures to do so.

Whereas in 1956 and 1957 three DC-7's could produce three round trips in eight hours between New York and Miami, the same number of round trips can now be performed in the same amount of time with two DC-8's carrying two and one-half times as many passengers. Conversely, the addition of a single jet schedule can produce capacity capable of meeting substantial public demand. Further, the large number of seats in each plane means that at a given load factor a jet offers considerably more available space to meet unexpected traffic demands than does a smaller, piston aircraft.

Data on actual operations during the 1962-1963 peak Florida season show that had Northeast not been operating during that season, Eastern and National, without the addition of a single flight, could have accommodated the traffic of the major Florida nonstop markets, with the single exception of Boston-Miami, and would have needed only 20,603 additional seats to accommodate that market. This would have required less than the capacity of one daily jet round trip.[14] We also note that, during Eastern's strike, National and Northeast, which together previously had carried less than 50 percent of the traffic in the markets, had the responsibility of providing, and did provide, all of the Florida service for several weeks. If National and Northeast alone could meet the needs of the market then, Eastern and National can do so now.

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[14] Eastern's and National's load factors, without Northeast and without additional schedules, would have been 76.4 percent in New York-Miami, 64.9 percent in New York-Jacksonville, 85.4 percent in Philadelphia-Miami, and 103.2 percent in Boston-Miami. An additional flight would be essential in Boston-Miami and desirable in Philadelphia-Miami. At a 76.4 percent load factor in the New York-Miami market, Eastern and National would have operated 118,668 empty seats in the 151-day period—786 empty seats per day.

The examiner concluded on the basis of 1962 data that the high load factors, which would have existed on flights then operated by Eastern and National in some of the markets had Northeast not been operating, indicated a need for a third carrier.[45] But, as indicated above (note 44), such load factors on jet aircraft do not necessarily indicate that there may have been inadequate capacity on peak days. Indeed, the examiner's tabulation shows that a 73 percent load factor in the New York-Miami market in 1962 would have meant 1,000 empty seats per day. Moreover, the examiner made the unwarranted assumption that Eastern and National would maintain the same frequency level in the future in two-carrier markets that they did in the past in three-carrier markets.[46] He also failed to take into account the fact that the over-all load factors upon which he relied embraced periods during which Eastern, the predominant carrier in these markets, was totally or partially shut down by strikes and National was phasing in its newly-acquired DC-8 equipment. Accordingly, we disagree with the examiner and find that Eastern and National can and will accommodate the traffic.

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[45] The examiner's tabulation, based upon nonstop traffic by segments, indicated that Eastern and National would have experienced a 74 percent load factor in the total East Coast-Florida market and 73 percent between New York and Miami.

[46] Northeast's contentions that there would again be serious service deficiencies in these markets, in the event Northeast were not renewed, also rest on the unwarranted assumption that Eastern and National would not key their schedules to traffic demands. Nor is there any persuasive showing in this record that Eastern will be unable to acquire whatever additional equipment might be needed to serve these markets. In fact, Northeast advises in its statement of position that there is an increasingly large pool of jet aircraft which would be available for lease during peak periods. Moreover, National's Form 41 for March, 1964 indicates that it has on order seven Boeing 727's scheduled for delivery in late 1964 and early 1965 and an option on three more. As our dissenting colleagues pointed out before, Eastern had on order forty 727's as of March 31, 1963.

In support of the contention that two-carrier service is not enough in the East Coast-Florida market, Northeast points to a number of city pairs which generate less traffic than some of those at issue here and in which three or more carriers have authority to operate. As we pointed out in our prior opinions, however, the number of carriers in one market cannot be taken as establishing a standard to be followed in another. This is well illustrated by analysis of the Board's decisions which resulted in the authorizations in the city pairs cited by Northeast.[47] It discloses that in a large number of them, multiple competition is the incidental consequence of the location of the points in relation to a route for which a need for new service was found. In many of them the Board either expressly found no need for additional competition or made no findings with respect to the city pairs cited by Northeast. Indeed, in many of them the Board imposed long-haul restrictions which precluded any substantial additional competition for local traffic. Plainly these markets establish no standard for determining whether multiple competition is appropriate here.

Of course, the Board did find that the public convenience and necessity require multiple competition in some of the markets cited by Northeast. For the most part decision in these cases turned upon the existence of serious service deficiencies and other facts and circumstances peculiar to each of them. We do not, however, consider that this establishes a standard or rule governing the exercise of our judgment in this case. The air transportation industry is subject to rapid and significant changes in technology and economic conditions. It is inevitable that the Board's route decisions will reflect these changes. This is the very essence of the regulatory process. It is the Board's function, indeed its duty, to adopt its regulatory policies to changes in the industry.

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[47] Attached hereto as Appendix D is a detailed analysis of the markets to which Northeast refers (other than East Coast-Florida).

It is elementary, of course, that there must be a reasonable correlation between supply and demand if economic conditions are to prevail in the industry. The supply of air transportation depends upon the frequency of schedules and the capacity of the equipment used. As additional carriers are added to a market, the supply will tend to increase with the introduction of competitive schedules. To be sure, this may provide the traveling public with such benefits as a wider choice of schedules and a greater number of available seats at peak travel times. Such benefits, however, are not free. They are purchased at the price of additional equipment and increased operating expense.[48] Thus, it is essential that there be sufficient demand, actual or at least potential, to pay for the benefits of the additional operations.

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[48] In considering operating expense, indirect costs must not be overlooked. For example, regardless of the traffic carried, there will be certain minimum additional station costs. To name but a few such costs, ticket offices or counters must be rented or otherwise maintained at each point. Personnel must be employed to man them, as well as to dispatch and maintain the aircraft. This all tends to increase other indirect expenses in the administrative category, such as accounting. Obviously, all of these costs will increase on a unit basis the more the total traffic is divided among an increased number of carriers.

These observations are especially relevant with respect to jet markets. As the Board said in the *Southern Transcontinental Service Case*, 33 C.A.B. 701, 715 (1961), "the operation of jet aircraft must have an important bearing upon the question of creating additional duplicating service." In the first place, the capacity of these aircraft is greater than that of the piston equipment previously used. Secondly, as we said in discussing the ability of Eastern and National to satisfy the demands of the East Coast-Florida market, the carriers' need to make productive use of their enormous investment in these aircraft creates economic compulsion to obtain maximum utilization and, because of the speed of the aircraft, this tends to create greater schedule frequency in the market.

In short, a carrier operating jet aircraft today is compelled by the cost and operating characteristics of the jet to offer a greater quantum of service on a given route than was true ten years ago. Or, stated conversely, a larger market is required to support profitably the operation of jet aircraft on a given route. In our judgment, therefore, it also follows that the need for larger markets to support jet operations has corresponding effect upon the amount of competition which can be justified and supported. In simplest terms, a market of a specific size which may have been sufficient to support piston operations by two carriers ten years ago may be insufficient to support jet operations by two carriers at the present time. Other factors being equal,[49] larger markets are presently required to justify additional competition.

The situation today is significantly different from that existing in 1956 when the Board found that additional competition was necessary to insure provision of good service. There were two principal problems then. Eastern and National were unable to meet traffic demands at peak periods. Moreover, and no doubt at least in part because of equipment limitations, they were concentrating most of their competitive effort on New York-Miami to the neglect of the smaller markets. Today there is no doubt of their physical ability to meet traffic demands and no dearth of competition in the side markets. For example, as of February 15, 1963, the three carriers provided 10 New York-Tampa flights (two nonstops), Northeast's contribution being a single one-stop flight. As of February 15, 1964, Eastern and National offered 12 flights, three of them nonstop. Northeast, of course, had suspended service to Tampa. Indeed, Northeast has in effect conceded that there is no need for additional service in the side markets by suggesting that the Board certificate it only between Boston, New York, and Philadelphia, on the one hand, and Miami on the other. If our appraisal of the capability of the remaining carriers or their competitive aggressiveness should prove inaccurate at some time in the future, the Board has adequate means for remedying the situation, including a proceeding under Section 401.[50]

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[49] That is, in the absence of other factors of public convenience and necessity requiring a different result.

As noted by the minority, in reaching our conclusion we have not found that the market will not "support" three carriers. Possibly it could do so, despite the seasonal and directional characteristics of the traffic, if it were operated by a third carrier unhampered by the basic problems which affect Northeast. However, in our view the public convenience and necessity does not require that each market should be served by the maximum number of carriers which the traffic will bear, for to do so would produce a national air transportation system of marginal strength, vulnerable to minor as well as major adverse circumstances. Certainly Northeast's experience, as reflected by the record in this proceeding, indicates a need for caution in approaching the question of a third carrier on this route. In these circumstances, and since we find that Eastern and National can and will fully meet the needs of the traveling public, we believe that it would be an unnecessary gamble with the public interest to authorize a third carrier in the hope that it would fare better than Northeast did. ***Accordingly, we conclude that a third carrier is not required by the public convenience and necessity.***

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[50] As the examiner noted in the original *New York-Florida Case*, 24 C.A.B. at p. 198, "it is easier to add carriers and service when subsequent experience proves it necessary than to endure and correct the harmful effects of over-certification of service on a route."

The question has been raised as to whether a decision to have only two carriers is inconsistent with prior Board decisions where multiple competition has been authorized. While there are some previous decisions containing dicta which may be read as favoring multiple competition, analysis of these decisions as well as the general course of previous route cases does not reveal any standard or rule which would dictate a decision herein contrary to the result we have reached.[51] In our judgment, there is no basic inconsistency between our decision herein and the prior course of Board decisions.

It is a fundamental fact that Board decisions in route cases do not turn upon any doctrinaire approach to competition. The Board has not, and as a practical matter, cannot decide how much competition should be authorized in a given case by resort to some predetermined formula, or fixed notions as to whether it is "for" or "against" multiple competition. The decision to grant or deny a given route application turns on a host of economic decisions. In each case, there is a detailed economic analysis of the then existing economic circumstances with regard to the markets involved, and the carriers involved; and there is equally a detailed analysis of the prognoses for the future. These analyses and projections touch upon the major elements of route construction, including costs, service, market characteristics, carrier needs and abilities, and the needs of the industry generally. The decisions reached, while often by a divided Board, turn in large measure upon differences in economic forecast and judgment of what the future will bring, rather than upon any rigid concepts regarding competiton. And indeed this is as it should be under our regulatory statute which provides for a full hearing in each case, and the development of a detailed factual record as the basis for decision.

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[51] Appendix D.

In this setting, classification, of prior Board route decisions as demonstrating a policy favoring multiple competition or opposing it has little significance. The fact of the matter is that the Board recognizes that the statute includes "competition" among the factors to be considered in deciding questions of public convenience and necessity, but that it also includes all the other standards in the Act in reaching its decisions. Consequently, the decisions authorizing a third carrier in one market, at one particular period, but refusing a third carrier in another market at another particular time does not mean that the Board has taken different positions on the abstract question of competition. Rather, it reflects an ultimate assessment of the total economic facts in the light of all the statutory standards comprising public convenience and necessity. This is what we believe the Act contemplates, and this is what we believe the Board has done.

III.

In our prior opinions, we found that Eastern had for some time been experiencing financial problems of its own, and a return to two-carrier service in the East Coast-Florida market could be expected to alleviate its difficulties to some extent.[52] Upon further reflection, we have decided to give no weight to this factor in reaching our ultimate determination in this case. Even if the record contained no evidence with respect to Eastern's financial condition, we would conclude that the applications in this proceeding should be denied. It is true that the adverse impact of a proposed *new* service upon another carrier is often a significant factor in a proceeding on an application for initial certification and indeed, may be the decisive factor in a determination to deny the application. Its place in an application to continue an *existing* service may be another question since, as we have previously recognized, an applicant for renewal stands in a somewhat different position than one seeking to enter the market for the first time. This, however, is a question which we need not now decide. As stated above, we consider that renewal of Northeast's authority would be inconsistent with the requirements of the public convenience and necessity for reasons which transcend and are wholly unrelated to any need which Eastern may have for strengthening. Similarly, our conclusion that two-carrier service will meet the service needs of the East Coast-Florida market and will provide a level of competition commensurate with the statutory policy is not based upon Eastern's financial condition. Accordingly, we do not reach the question of impact of Northeast's continued operation upon Eastern.[53]

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[52] The carrier had net losses of $3.7 million in 1960, $10 million in 1961, and $13.5 million in 1962. Its equity position deteriorated approximately $14.7 million between March and December, 1962 of which $11.6 million was reflected by the dissipation of working capital.

IV.

Our decision not to renew Northeast's Florida authority has been a difficult one. Northeast has risked its capital and has lost millions of dollars in providing unsubsidized service in New England for many years. Its management has worked hard and diligently to develop its Florida route. There were service deficiencies at the time of its certification (due in no small part to the equipment shortages of the existing carrier), and Northeast's services undoubtedly contributed to their alleviation.[54] Additionally, Northeast has greatly expanded its organization and increased the number of its employees. Termination of the carrier's Florida route will inevitably have adverse effects on its employees, the New England communities in which those employees reside, its creditors, and its stockholders.[55]

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[53] Of course, as noted in the dissent, termination of Northeast's operations south of New York may be expected to redound to the benefit of Eastern. We do not believe this is "robbing Peter to pay Paul." As the dissent further recognizes, National too will presumably benefit from our decision, yet it has not been suggested that we are thereby determining to aid National at Northeast's expense. Existing carriers inevitably benefit when an application for competing authority is denied, whatever the reason for denial. This is no more than the natural consequence of regulated competition.

[54] On the other hand, as previously indicated, there was countervailing deterioration of other Northeast services.

[55] We have taken into account the evidence introduced by the union intervenors in their exhibits setting forth in detail the number of employees involved and the amount of earnings and other losses which the employees would suffer. The employee groups urged that the Board make provision

Consequences of this nature are a matter of great concern to this Board. It has been such concern that has led the Board over the years to make every effort to assist Northeast in finding a solution to its difficulties through such steps as continued payment of subsidy for two years after the Florida route was awarded and the unprecedented procedures followed by the Board in approving, first, an agreement to make possible emergency relief for Northeast by Toolco and, later, the acquisition of the carrier by Toolco. However, as regrettable as the consequences of our action may be, they do not counterbalance the over-all public interest factors which dictate a decision not to renew the temporary authority.

In view of our finding of no service need or justification for a third New York-Florida carrier, we will deny Braniff's, Delta's, and Pan American's applications requesting New York-Florida authority in the event Northeast's Florida route is not renewed. We will also deny Delta's East Coast-Florida authority even on a one-stop basis. Delta is presently prohibited from providing through-plane service in these markets. The carrier is seeking modification of the prohibition to make possible single-plane service between Florida and Northeast cities, with a mandatory stop at Atlanta.

As Delta claims, relaxation of the restriction might provide Delta greater flexibility in rotating and scheduling its flight equipment into its Miami maintenance base. How-

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for the integration of Northeast's employees when they become unemployed into the operations of Eastern and National. They further suggested that the Board impose upon Northeast the normal protective conditions used in merger cases and then provide Northeast with sufficient subsidy to meet the cost of those conditions. However, they presented no matters which, in our opinion, would supply the basis for an assertion by the Board of the legal power to take the actions requested. No more specific showing is made in their statement of position on remand.

ever, we do not believe that any operational advantages that might accrue to Delta from the termination of the restriction are sufficient to justify Delta's entry into the Northeast-Florida market at this time, even on a one-stop basis.

We find unpersuasive Delta's contention that, because of the circuity involved, its single-plane East Coast-Florida service would be noncompetitive with the direct Northeast-Florida carriers and that the small amount of traffic it would be able to capture would not harm those carriers. Admittedly, Delta's one-stop service would not attract many passengers in nonstop markets like New York-Miami. But many of the other East Coast-Florida markets cannot sustain nonstop service and can only support a limited number of frequencies. A one-stop flight by Delta between Florida and the Northeast via Atlanta could well pose a competitive threat to existing one-stop East Coast-Florida operations.

We find unrealistic Delta's argument that it does not contemplate establishing through-plane northeastern area-Florida schedules on the basis of traffic moving between the two terminal areas. Delta would be free to change or increase its proposed schedules at any time.

We agree with the examiner that Allegheny's request for nonstop rights in the New York-Washington and the New York-Baltimore markets should be denied. Although Allegheny objects to the examiner's failure to consider its nonsubsidy proposal, the fact that Allegheny offered to provide these services on a nonsubsidy basis does not affect the examiner's conclusion that the carrier's proposed services are not required.[56]

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[56] Baltimore contends that denial of Allegheny's request for New York-Baltimore nonstop authority is inconsistent with the decision in the

However, rather than deferring Allegheny's application for Boston-Philadelphia nonstop authority, as would the examiner, we will deny it. Allegheny serves between Boston and Philadelphia on a one-stop basis, and it proposes three daily nonstop round trips with Convair 440's in addition to its other intermediate Boston-Philadelphia flights. These schedules would offer a first-class reservation and a low-fare, no-reservation service on the same aircraft.

Four trunkline carriers, in addition to Northeast, are already authorized between Boston and Philadelphia. Frequent nonstop service, with turboprop and turbojet equipment, is being provided and an additional nonstop carrier is not necessary to provide adequately for the local traffic demands in this market. Nor has Allegheny demonstrated that, even without Northeast's service, those needs will not be met by the remaining carriers. The record does show, however, that Eastern intends to offer additional frequencies and that it may schedule Boston-Philadelphia

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Washington-Baltimore Adequacy of Service Investigation, 30 C.A.B. 1215 (1960). We disagree. The crucial fact overlooked by Baltimore is the completely different frameworks in which the two cases were decided. In the *Adequacy* case, the Board was concerned with the question of whether the eight presently certificated Baltimore-New York carriers were adequately meeting the service obligations of their certificates. The Board found that the volume of service was adequate but that, because of the inconvenient timing of some of those schedules, the quality of the service did not meet the adequacy obligations of the carriers. Here, however, no adequacy of service issue under Section 404(a) was involved. Rather, the question was whether the addition of Allegheny as another nonstop Baltimore-New York carrier is required by the public convenience and necessity.

The Baltimore-New York market receives a substantial volume of nonstop schedules, providing morning, afternoon, and evening service with jet and other modern four-engine equipment, and the record does not persuade us that the certification of a costly subsidized service, with its unneeded additional capacity, is required to adequately meet the service needs of the market. As the examiner properly pointed out, any shortcomings in the timing of Baltimore-New York schedules that may exist should be corrected by the carriers already in the market.

"air shuttle" flights if Northeast's route south of New York is not renewed. Under such circumstances, we can see no justification for substituting Allegheny for Northeast as a fifth Boston-Philadelphia nonstop carrier.

Although we have concluded that Northeast's temporary Florida authority should not be renewed, it is clear that the public interest requires a continuation of the services which Northeast alone provides in New England. To this end, we have, as previously indicated, placed it on subsidy under Section 406 of the Act in order to permit continuation of the required services in that area. Viewed realistically, Northeast's New England operations are in fact local service comparable to the services provided by local carriers over route networks in other parts of the country. New England is entitled to the same treatment as the remainder of the nation, and, hence, to such subsidy support as may be required to make possible the continuation of adequate air service. Should there be disruption in Northeast's services, the Board will exercise its full authority to provide and maintain an adequate level of local service in that area.

We have given due consideration to all of the exceptions filed by the parties and find that, except to the extent previously indicated, they do not alter our decision herein.

Accordingly, in view of the foregoing and all the facts of record, we find:

1. That the public convenience and necessity do not require the renewal of Northeast's authority to serve Philadelphia, Pa., Baltimore, Md., Washington, D.C., or Jacksonville, St. Petersburg-Clearwater, Tampa, Fort Lauderdale, or Miami Fla., on route 27.

2. That the applications of Northwest Airlines, Inc., in Docket 12709, and Riddle Airlines, Inc. (now Airlift International, Inc.), in Docket 12706, should be dismissed.[57]

3. That, except to the extent otherwise indicated, all applications consolidated herein should be denied, and all investigations involved herein should be terminated.

4. That a certified copy of this opinion and order, together with the statements of position heretofore received, should be transmitted to the United States Court of Appeals for the First Circuit.

An appropriate order will be entered.

BOYD, Chairman, GURNEY and GILLILLAND, Members, concurred in the above opinion. MURPHY, Vice Chairman, and MINETTI, Member, filed the attached joint concurring and dissenting opinion.

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[57] Northwest Airlines, Inc., by letter dated July 24, 1962, requested that its application, Docket 12709, be dismissed. Airlift International, Inc., offered no evidence at the hearing in support of its application.

MURPHY, Vice Chairman, and MINETTI, Member, concurring and dissenting:

Again we must dissent from the current conclusions reached by our colleagues both as to the procedures being followed subsequent to the remand of the earlier decision by the Court of Appeals and to the substance of the new rationalization of a denial of Northeast's renewal application.

As to procedure, we are convinced that one cannot properly conclude to terminate the Florida route without reopening the record to consider, *inter alia,* such favorable changed circumstances as the increased traffic in the markets in issue and the proposed improvements in Northeast's debt structure.

As to substance, we find little in the new opinion which requires any change of the views we expressed, at length, in our prior dissents. We continue to adhere to those views.[1]

A comparison of the majority's restatement with its prior opinion discloses a complete abandonment of any reliance upon the benefits which the denial of Northeast's application would bestow upon Eastern in terms of financial strengthening. The majority's original decision reposed substantial reliance upon this factor. However, the majority did not spell out the reasons why it believed Eastern should be aided at the expense of Northeast. The Court in its opinion on remand stated that the Board must give reasons for "robbing Peter to pay Paul". But such reasons are not given here. The majority simply discards the point rather than try to supply reasons from a record in which Eastern's needs vis-a-vis Northeast's were not in issue.

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[1] We specifically reaffirm our prior dissents and attached appendices.

However, for whatever stated reasons, the inevitable result of the majority's action, reversing prior findings of the Board that three-carrier service between New York and Florida was required and economically justified, will be to benefit Eastern (and National). As previously stated, we commonly share a concern for the welfare of Eastern as well as all other carriers in the industry. But, unlike the majority, we are convinced that it is neither necessary nor consistent with the public interest which we are obligated to protect and promote to strengthen Eastern at the expense of Northeast. Obviously, Eastern's problems were not caused by Northeast's entry in the Florida markets and other alternatives are available to assist Eastern in regaining financial stability without destroying Northeast.[2] Furthermore, we note the encouraging improvement in Eastern's operating results due in large part to self-administered remedies.[3]

The majority previously said there was no need for a third East Coast-Florida carrier *at this time*. Now, in the face of an increasing traffic market, the majority finds no need for a third carrier. Even this finding is qualified, however, by the statement that a third carrier will be authorized later if the majority's conclusions "prove inaccurate at some time in the future."[4]

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[2] Eastern requests for route strengthening are presently being considered in several pending cases.

[3] Eastern's latest reports indicate considerable improvement in its financial condition.

[4] For the majority to deny Northeast's application on the basis of no need for a third carrier and thus precipitate the possible collapse of Northeast, is indeed anomalous in light of the expectation of other carrier parties

The majority previously avoided a finding on Northeast's fitness. Now, despite proposals to revamp the carrier's debt structure, and in a generally more favorable economic climate for Northeast, the majority finds the route should not be renewed for reasons peculiar to Northeast.

We confess we are perplexed by the generalities of the majority's new opinion—particularly in light of the Examiner's specific findings of need for a third carrier on the route which this record supports.

We continue to have difficulty comprehending upon what basis the majority finds that the service demands of the traveling public on one of the richest, growing routes in the United States no longer warrant three carriers when in 1956 the Board, by a 5 to 0 vote, found multiple carrier competition was necessary to insure the provision of the quantity and quality of service to which the Northeast-Florida markets were entitled.

The economic characteristics of the cities on the East Coast-Florida route are stronger today than they were in 1956, the total annual volume of passengers is considerably greater now than it was in 1956 and Northeast's services have obviously benefited a large segment of the traveling public. Moreover, the majority does not find, and it could not do so on this record, that the East Coast-Florida route, with nearly two million passengers and

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that this market cannot be reserved for long for only two carriers. See pp. 29-31 of our prior dissent.

We cannot overemphasize the significance of the fact that this case is not concerned with a new carrier service but rather involves the continuation of a carrier which at great investment cost has mounted and provided a useful service which has unquestionably redounded to the public benefit. When all factors are favorable for renewal, is it consistent with the promotional provisions of our statute that all this should have been for naught?

two billion passenger-miles a year, cannot support three-carrier competition. Indeed, our Bureau of Economic Regulation concluded from the record that all of the Florida carriers earned operating profits from the Florida markets in 1961 and the first quarter of 1962. Both Eastern and National forecast operating profits in 1962 from their Florida services even with Northeast operating over the route. Examiner Walter W. Bryan found "There is no convincing evidence of record that either of the two carriers (Eastern and National) has suffered any economic loss on its Florida routes due to the competition on that part of its respective route system." The record shows the route can support three-carrier competition. For the majority to conclude otherwise requires evidence not in this record.

Certainly, in view of the density and importance of the route, its continued growth and future potential, its ability to support three-carrier service and the increasing efficiency and earning capacity of the jets,[5] it is clear that refusal to renew Northeast's Florida route cannot be predicated upon lack of traffic. Thus, it would appear that the standards normally employed by the Board in authorizing three-carrier competition in comparable markets have been met. Why then should the Board remove a carrier already serving the markets and thereby deprive the traveling public of the demonstrated benefits of multiple-carrier competition which are enjoyed by travelers in other markets of lesser size and revenue generating ability and thus reserve the route for Eastern and National? As Examiner Walter W. Bryan said, "To set aside a market involving nearly two million annual passengers for two carriers could well be considered a protected market for the few."

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[5] Jet breakeven load factors are in the range of a minimum of 10 points lower than on piston and turbo-prop aircraft.

The Board, in recent decisions, has not been so concerned about eliminating three-carrier service in much smaller markets. In the recent *Competitive Trunkline Service Investigation,* Orders E-20892 and E-20893, June 3, 1964, the Board unanimously refused to eliminate third carrier competition in considerably less dense markets in a proceeding specifically instituted to consider that issue.[6]

The majority concludes that Eastern and National can and will accommodate the present traffic demands of the markets and that they will provide "a level of competition commensurate with the statutory policy". Therefore, Northeast's services are no longer needed. But the traffic demands of the traveling public between the Northeast and Florida were not met in the past when this route was served by these two carriers and, based on past experience, there is no assurance they will be in the future.

The decision to return this route to two-carrier competition is predicated on two basic arguments. First, the majority finds that Eastern and National are now "physically" able to meet traffic demands in contrast to their inability to do so in 1956. Second, the majority says there is no dearth of competitive service by Eastern and National in the side markets today in contrast to their neglect of these markets in 1956. In the majority's view, the intervening replacement of piston aircraft by jet aircraft with their greater seating capacity, greater schedule frequency because of higher speeds, and the desire of management to make productive use of the huge investment in jet aircraft, not only makes possible the offering of capacity far in excess of that offered in the piston age, but creates economic pressures to do so.

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[6] There is no gainsaying the Board's award of multiple-carrier authorizations purposefully and specifically in many markets of far less traffic than those here in issue. Such awards as Chicago-Miami and New York-San Francisco, for example, were made in recent years and with full cognizance of jet operations. We would note further that it is less than precise to denominate as dicta some of the findings and policy conclusions articulated by the Board—including some quoted in our prior dissent—in the opinions granting these awards.

We do not disagree with the majority that Eastern and National can position themselves to "physically" carry all the traffic. Conceivably, one carrier could do that. However, this situation is not materially different from that in 1956.[7] Moreover in our view technological advances in the type of aircraft available to the industry is no more reason for terminating three-carrier competition in these markets than it is for refusing to authorize additional competitive service.[8] As we indicated in our earlier dissent, the Board has previously held in many cases that the willingness and ability of existing carriers to render adequate service is no bar to an additional certification and the majority's rejection of the statutory principle favoring competition and their departure from precedent have not been satisfactorily explained in this case.

Nor can we agree with the majority that the greater capacity and speed of jet aircraft and the economic pressures created by their higher investment cost assure the competitive spur necessary to insure provision of the highest type of service to the public and the fullest development of the traffic potential. Honest and efficient management has always been under an economic obligation to obtain maximum equipment utilization, whether jets, DC-6's, or DC-3's. We simply cannot accept the majority's assumption that the operation of jets between the Northeast and Florida will automatically provide a cure for past service deficiencies. The Board in other cases has held that it would not be consistent with its statutory obligation under the Act to rely on the assurances of the existing carriers that their jet services will insure the service benefits to which the traveling public in markets of this size are entitled.[9] In our judgment, the record in this case affords no reason for changing that policy here.[10]

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[7] The Board in its 1956 opinion specifically noted the extensive reequipment programs of the two carriers, including their plans to use jet and turbo-prop aircraft in these markets.

[8] Cf. *Great Lakes-Southeast Service Case*, 27 C.A.B. 829 (1958).

The majority's statement that the side markets are now receiving competitive service from Eastern and National requires little comment. It would be unusual indeed if Eastern and National, during the pendency of this case, again neglected these markets. There is nothing in this record to assure vigorous competition by Eastern and National in the side markets if Northeast's authority is terminated.[11]

The majority's attempt to show that if Northeast had not been operating during the 1962-1963 peak Florida season, Eastern and National could have accommodated the traffic of the major Florida nonstop markets on their existing flights, with the exception of Boston, Miami, is merely another way of saying two carriers can physically carry the traffic. Clearly, a recitation of the number of seats and schedules operated in a particular market is not itself determinative of whether the service is fully satisfying the traffic demands. Quantity and quality of service can only be measured by considering the volume of service together with the timing of schedules, the actual ability to obtain seats on particular flights and the load factors on flights which operate at convenient hours. Moreover, during the first quarter of 1963, the period of heaviest Florida travel, Eastern's and National's load factors, without Northeast, would have been 80.9 percent New York-Miami, 89.8 percent Philadelphia-Miami and 104.4 percent Boston-Miami. This certainly indicates that passengers were unable to obtain seats on many flights even if those flights were operated with jets.

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[9] *New York-San Francisco Nonstop Case,* Order E-14412, September 2, 1959.

[10] The sentence cited by the majority from the *Southern Transcontinental Service Case* does not really answer the question before us.

[11] We can find no support for the majority's assumption that by withdrawing from the side markets Northeast concedes lack of need for its service. It seems more likely to us that Northeast's withdrawal was the result of loss of half its jet fleet after issuance of the Board's decision terminating the Florida route as the carrier asserts.

Consideration of the needs of the New York-Florida markets must not be limited to the immediate present but must reflect the long-range future for air service in these large and growing markets. For a period of more than twenty years, the Board has enunciated a policy of fostering competition to meet present and future needs of commerce, the postal service, and the national defense as the developing air transportation markets have permitted, and has followed an active policy of expanding competition over routes and between city pairs whenever possible. There is no reason to believe that the Board's policy of authorizing multiple carrier competitive service in the past was not in conformance with the statutory obligation to consider competition to the extent necessary to assure the sound development of an air transportation system.

On the contrary, despite the addition of a substantial amount of competitive service in many markets during the past several years and the necessary readjustment to the additional capacity offered by jet aircraft, the air transport industry has continued to grow and prosper and the number of passengers being transported has increased year by year. The air transport industry, however, is still young and growing, the air traffic potential is still almost untouched, and much is still to be done to fully develop this means of trade and travel.

The majority, however, explains that "Eastern and National can provide competition commensurate with the statutory policy." In our view, the majority has reversed the policies adopted by the Board in the *New York-San Francisco Nonstop Case,* the findings and conclusions of the Board in the *Great Lakes-Southeast Service Case,* and the Board's findings and conclusions in the original *New York-Florida Case* without any real attempt to explain what distinguishing factors set this case apart.

Now that the piston-jet transition problems have been overcome, the economic recession of the past few years has been reversed, traffic and profits for the industry as a whole are at an all-time peak, we believe it is unwise and shortsighted for this Board to suddenly reverse our course in dealing with the future of an industry which is still young and dynamic. In our judgment, continued development of the industry and the domestic air traffic can best be accomplished, as it has in the past, by adhering to those policies which have been instrumental in building a small subsidized industry into a large profitable business with annual revenues of over two and one-half billion dollars.

The majority says the advent of jets calls for less competition than in the past and discards the ability of a market to support competition as a public convenience and necessity criterion. It is wearisome but accurate to point out again that such conclusions are contrary to all precedent.

Suffice it to say, with respect to the jets, that such a conclusion approaches the absurd when one considers the sharp and continuous downward trend in trunkline break-even load factors reflecting the marvelous efficiencies of the jet aircraft, the declining cost trend lines related to jet operations, the stimulation in traffic growth due to the jets which is the fact and which this Board has recognized in many cases, the increases in profits of jet operators, and so forth. It is the jet which has contributed so much to the resurgent growth and strength of the industry. Surely this is no reason and this is no time to restrict and cut back competitive authorizations.

Such conclusions as these find no support in either fact or law. They merely confirm our conclusion that the present case is not a "policy" decision but merely a "Northeast Airlines" decision.

We turn next to the factors peculiar to Northeast. In further justification of the denial of Northeast's authority south of New York, the majority concludes that the carrier has no reasonable prospects of conducting profitable operations, that it would continue to be an uneconomic unit in our national air transporation system, and that continuation of its Florida authority would not be in conformance with the Act. The majority expresses the view that Northeast's past experience is indicative of what it would do in the future, asserting that the temporary nature of its Florida authority was not a contributing factor to Northeast's alleged lack of success. The majority seems to believe that accordingly route contraction is appropriate rather than the ministration of further route strengthening, for example, a remedy which historically has been generously applied to bring all the other trunkline carriers to a state of vigorous health.

We are dismayed by the summary manner in which the majority brushes aside the impact of the temporary certification on Northeast's operating results. The Board has always recognized and given weight to the adverse effect a temporary authorization has on the stability of operations. The uncertainty surrounding such authorizations, among other things, impedes equipment financing, affects commitments on facilities and hinders employment of personnel. To us the evidence in this case amply demonstrates that Northeast was adversely affected by the temporary nature of its Florida route. And we submit that the majority errs in its attempt to adversely measure Northeast's future prospects on the carrier's operating experience under the temporary authorization.[12]

We are convinced that there is just as reasonable a prospect of Northeast achieving economic operations once it receives a permanent certificate and is relieved of the burdens and handicaps inherent in temporary certification as there is in viewing Northeast's prospects as hopeless. More than that, there is nothing in this record to show that Northeast's long-haul operations were not profitable. No exhibits were submitted in this case which attempted to segregate Northeast's New England operations from its long-haul and commuter operations. The Bureau's exhibits, as noted above, indicate that Northeast's Florida operations, if segregated from its New England operations, were profitable.[13] We believe that before taking such drastic action as proposed here, basic fairness, if not due process, requires a reopening of the record on this issue.

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[12] Insofar as the majority relies on Northeast's 1963-1964 operating results, it would be ingenuous indeed to believe that the majority's August 1963 opinion and all the ensuing publicity did not make Northeast's ability to compete even more difficult. Undoubtedly public confusion about Northeast's continued operation had an adverse impact on the carrier's public image and ability to attract business during the high traffic season.

In discarding Eastern's competitive tactics as a factor contributing to Northeast's lack of success, the majority refers to the dismissal of Northeast's section 411 complaint against Eastern. We need merely note our dissent to that decision and our affirmance of the conclusions stated in our earlier dissent in this case on that issue.

The majority refers to Northeast's seasonal problems in terms of equipment as evidence of the carrier's inability to operate economically. But the chances of ultimate profitability cannot be measured on the operating experience of aircraft which the carrier no longer utilizes and which were obtained under onerous leasing terms. With a permanent certificate, Northeast can acquire equipment under traditional financing arrangements not available to it as the holder of a temporary certificate. More suitable short-haul aircraft are now becoming available and we are convinced that any problems in integration of aircraft created by the seasonal characteristics of the East Coast-Florida markets can be satisfactorily solved under more favorable operating conditions. Moreover, jets can be utilized in the commuter markets, and yearly there is diminishing severity in seasonal variations in the New York-Miami market.[14]

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[13] Certainly from the standpoint of revenue generation, Northeast was successful. The carrier, despite the difficult conditions under which it was forced to operate, was an effective competitor and attracted a fair share of the Florida markets as well as the commuter markets. It captured, for instance, a far greater share of the market than has Northwest, the third carrier in the Chicago-Miami market. However, because of Northeast's inability to secure adequate equipment financing under a temporary certificate, thereby forcing it to lease a jet fleet at heavy rental charges, the carrier's direct flying costs and breakeven load factors are inflated, despite Northeast's increased operating efficiencies. We are sure these costs and breakeven load factors would be substantially reduced if Northeast owned rather than leased a jet fleet which would be likely with a permanent Florida route.

The majority, in finding that Northeast's future operations would not be profitable, also relies heavily on an assumption of market stagnation. Traffic returns for 1963 and 1964 showing traffic growth in the Florida markets of 9.3 percent in 1963 over 1962 and 10.3 percent in the first quarter of 1964 over the same period in 1963 successfully controvert the majority's argument.[15] The recent upsurge in Florida traffic coincides with the resumption of normal traffic growth in domestic air travel markets generally and reflects the generally expanding level of the United States economy.[16] In addition, the commuter markets served by

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[14] The majority also appears to imply that Northeast is undeserving of renewal because "Northeast has reduced frequencies in many of the New England markets and provides less service in some of them today than it did in 1956." We are not prepared to accept at face value the majority's repeated references to a worsened pattern of New England local service but would further note that the Board has often been confronted with situations involving pronounced curtailments of service by trunkline carriers in local markets following the award of long-haul routes without taking drastic action against the trunkline. Cf. *Southwestern Area Local Service Case*, Order E-19254, January 30, 1963.

[15] As we have said before, a 1 percent increase in the Florida traffic means 20,000 additional passengers.

[16] Domestic trunk traffic in October advanced sharply to a new all-time high. After seasonal adjustment, October traffic was running at an annual rate of 43.4 billion revenue passenger-miles as compared with 41.1 billion in September and 42.7 billion in August. In percentage terms, traffic for the month rose 5.5 percent from the September level, 1.6 percent above the August peak, and 14.0 percent over the same month a year ago. October's sharp advance continued the strong upward movement of domestic trunk traffic. Seasonally adjusted traffic in October was 7.7 percent higher than in May and 8.1 percent above last December. October traffic gains were not only large but widespread, as all the individual carriers scored September-to-October traffic gains. Higher traffic was shown also by all the individual carriers in comparison with the same month a year ago. Most individual carriers also reached their all-time peaks—Eastern,

Northeast and in which the carrier is seeking renewal, also show a continuing upward trend with traffic increases in excess of 30 percent since 1962.

Indeed, unlike the majority we think indications are favorable for continued traffic growth over the East Coast-Florida route. We are mindful of the fact that this route did not produce the volume of traffic estimated by the Board in 1956 and that the annual rate of growth was not 15 percent as had been predicted. But there is nothing new or unique about the non-achievement of traffic forecasts whether made by the Board or the carrier applicants and this factor should not be used as a basis for decision in this case.[17] The fact remains that New York-Miami, only one of the markets being considered, is the second largest revenue producing market in the country and each percentage point increase in passenger miles would yield additional commercial revenues of $1,000,000.

Similarly, we do not accept the majority's contention that Northeast's limited route system precludes achievement of economic stability and should therefore be chopped in half. We believe that in the long run Northeast can achieve success over the New York-Florida route. However, even if we were to assume that Northeast could not operate its East Coast-Florida route successfully, there is no reason why Northeast's present route structure need

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TWA, United, Braniff, Delta, National and Northwest. Eastern continued its upward surge.

The general economy also continues to gain as the Federal Reserve Board index of industrial production for August climbed to 133.5 (1957-59 = 100) as compared with 132.7 for July and 125.1 for August 1963.

[17] For example, the New York-San Francisco market has not yet achieved the traffic forecast for 1960 in the 1959 opinion authorizing the third competitive carrier.

be frozen in its present pattern. This factor, in and of itself, certainly does not require denial of the renewal application. The Board, consistent with its treatment of other "grandfather" carriers over the years, could and probably should expand Northeast's routes and provide access to additional traffic thus affording this carrier the same opportunities for growth and increased income which have been accorded other trunkline carriers. Indeed, we are deeply concerned about the Board's failure to give any consideration to Northeast's need for strengthening or to consider alternative methods for meeting that need. Rather, without giving any weight to factors in favor of its renewal, the majority merely concludes that Northeast's prospects for successful Florida operations are bleak and that continuation of Northeast's services south of New York would be contrary to the Board's obligation to maintain and develop a sound air transporation system.[18]

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[18] The majority intimates that subsidizing Northeast for the New England services at the same time the carrier is authorized to provide the Florida service is of dubious legitimacy. Presumably, subsidizing Northeast for the system it is presently operating would be anathema. However, on the contrary, such a result would be consistent with the pattern of the statute. We cannot forget the millions of dollars spent to support the trunkline industry since the passage of the Civil Aeronautics Act of 1938—money spent to maintain and develop a financially strong and competitive air transport system. During all the early years all the trunks were awarded rich routes intended to strengthen their position and, at the same time, provide better public service. They received substantial subsidy all the while. Only Northeast has not been so favored. At the time of the Florida route award Northeast abandoned its statutory right to subsidy for the services it provided and during all the ensuing years of its operation in the face of great adversity it kept its commitment. We say that the development and maintenance of a sound air transport system requires our support for all the existing entities in the interests of the traveling public, the national defense and the postal service. If this requires payment of subsidy to Northeast, subsidy should be paid just as it was paid

It is a strange policy, indeed, and one which we cannot believe is consistent with the Act, which dictates such treatment of the only "grandfather" carrier which has not received the same route expansion and strengthening accorded other trunkline carriers on the ground that it is a small carrier with a limited route system. It is particularly curious when the inevitable result of the denial of Northeast's opportunity to participate in these rich markets will be to benefit Eastern and National, both beneficiaries of lucrative route extensions over the years.

We find it impossible to reconcile such a decision with the majority's concern for the future development of our national air transportation system. As we see it, improvement in the economic condition of Northeast is in accord with the policy provisions of the Act which direct the Board to encourage and develop an economically sound national air transportation system. The Board has consistently held that these objectives of the Act can best be realized by developing the entire air transportation network and improving and developing the small or weaker carriers. Northeast's ability to render a better service in New England will be greater if it is financially strong than if it is left financially weak.[19] There is an important

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all the other trunkline carriers and U.S. flag carriers during the many years when their route systems were being expanded. Any argument that the Board should not subsidize competition with non-subsidized carriers overlooks the fact that this is the case in any number of instances at the present time and has been in the past.

[19] The majority's passing reference to renewal of the Florida route as a deterrent to a possible merger with Mohawk or Allegheny portends little hope for assistance from the majority for sound solution of New England's present and future need for adequate, single-plane, trunk airline service. And it is somewhat surprising too. For a Board as concerned about sound

national interest in developing each carrier, whether large or small, so each may become financially self-sustaining and thus be in position to render the best possible service to the public the carrier serves. Northeast should be given this opportunity which it lacked under a temporary certificate.

As best we can perceive it, the majority seems to cloak its decision with an obligation to foster an economically sound and profitable air transport industry. Profits for all carriers is an ultimate goal we too hope will come to pass. However, the regulatory scheme is not so limited as inclusion of the subsidy provisions indicates. There are other equally important elements of the public interest and public convenience and necessity set forth in section 102 of the Act which must be taken into account in deciding this case—elements which in our view call for renewal of the Florida route.

We feel obligated to consider the public benefits from Northeast's transportation service; the interests of Northeast's employees, stockholders and creditors and the continuation of Northeast as a viable useful trunkline carrier. Likewise, we are constrained to consider the ailing transportation economy in New England and the consequences of this decision upon it. The statute and precedent require careful weighing of these factors. Thus for the reasons expressed herein and in our earlier dissents, we would permanently renew Northeast's New York-Florida route.

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economic conditions in the air transport industry as their statements would indicate to relegate New England air service to a local system requiring millions of the taxpayers' dollars in subsidy rather than to smooth Northeast's path toward economic viability is, in our view, the ultimate contradiction.

Any other disposition of the issues in this case would require a reopening of the record for further hearings.[20]

/s/ **Robert T. Murphy**

/s/ **G. Joseph Minetti**

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[20] If the facts of traffic growth in the Florida market and the improvements in airline finances in general are found insufficient to warrant renewal, they must then be considered in a reopened hearing. Even with a liberal discount for puffing, advertising statements such as the following from the November 8, 1964 Wall Street Journal contradict any conclusion of market stagnation. "Florida is the fastest-growing major state in the nation . . . now ninth in population." p. 13. "Since January 1, 1964 . . . 18 new industries have broken ground in Tampa, and . . . 69 have begun major expansion of their Tampa plants." p. 12. "Miami International Airport continued its record rate of increase in 1964 for air cargo, air mail and passenger traffic. 153,931,481 pounds of domestic and international air cargo were handled with ease—reaffirming Miami International's enviable reputation as the leading air cargo terminal in the world! Flight movements too were up." p. 12. "Miami is the third fastest growing market in the U.S. In 8 years, the number of people employed by Miami's manufacturers increased 65%. Payrolls 101% . . . Miami has jumped from 34th to 25th among most populous U.S. cities." p. 10. If these statements are true, this Board has a responsibility to be sure by reopening the record to ascertain the current facts before dealing a mortal, irreparable blow to Northeast.

APPENDIX A

Appendices to Renewal Opinion

EXCERPTS FROM THE INITIAL DECISION

OF

WALTER W. BRYAN

IN THE

NEW YORK-FLORIDA RENEWAL CASE

DOCKET 12285 *et al.*

* * * * *

During the year 1954 prior to the Board's original decision, the Florida markets generated slightly over 1,000,000 passengers. Of this number Miami/Fort Lauderdale accounted for 878,000, of which 650,000 were generated in the New York-Miami market. Tampa/St. Petersburg accounted for 88,000 and Jacksonville 102,000. In 1955 the total traffic in the side markets had increased to 1,326,000 of which number Miami/Fort Lauderdale accounted for 1,105,000 with New York-Miami/Fort Lauderdale contributing 819,000, Tampa/St. Petersburg 134,000, and Jacksonville 86,000. In 1956 the total of all the side markets had increased to 1,523,000 with Miami/Fort Lauderdale contributing 1,277,000, Tampa/St. Petersburg 158,000, and Jacksonville 86,000.

In 1957, the year following the authorization, the total Florida markets had increased to 1,672,000. Of this total the Miami/Fort Lauderdale market contributed 1,355,000, Tampa/St. Petersburg 175,000, and Jacksonville 142,000.[8]

All of the Florida markets have shown a gradual increase in passengers generated. Some of the markets have shown greater increases than others. For instance, Philadelphia-Tampa/St. Petersburg has had 27.4 percent annual increase rate of growth over the six-year period from 1957 through 1962.[8a] The Philadelphia-Jacksonville market has had 21.4 percent growth and the Boston-Jacksonville market has had a 12.7 percent growth. The New York-Miami/Fort Lauderdale market in 1959 had a 22.3 percent increase over 1958. However, in 1960 this market had an 8.4 percent decrease over the previous year and in 1961 had a 1.8 percent decrease, resulting in 0.9 percent annual rate of growth over the five-year period.

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[8] See Appendix I.

The total Florida markets had an overall increase in annual rate of growth of 1.6 percent for the above period of time. The additional air service in the Florida markets brought with it improved and additional schedules in some of the markets. In March 1958 the Boston-Miami market had 206 nonstop flights as compared to 310 in March 1959 and 1960 and 248 in March 1962.[9] The above market did not have nonstop service in 1954 just prior to the Board's decision in the *New York-Florida Case, supra.* In the New York-Miami/Fort Lauderdale market in March 1958 there were 2,057 nonstop flights as compared to 1,546 in 1961 and 1,818 in March 1962.

Some of the other markets that did not have nonstop service just prior to the Board's decision have since received nonstop service. For instance, the New York-Tampa market did not have nonstop service in 1954 but in 1961 had four daily round trip flights. The Philadelphia-Miami market had two daily nonstop flights in 1959 as compared to five in 1961. And, the Washington-Tampa market had three daily nonstop flights in 1954 as compared to six in 1961.

[8a] See Appendix I.

[9] See Appendix II.

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National. National based its estimate of future traffic on the historic on-line passengers generated between the East Coast and Florida points and then mathematically projected its 1962 and 1963 traffic estimates. Based upon these forecasts National anticipates that it will carry 514,000 passengers in 1962 or 27 percent of the total market of 1,868,500 with a third-carrier competition. In addition, National estimates that it will carry 817,920 passengers in 1963 out of a total market of 1,883,500 or 43 percent of the total, provided it does not have the competition of a third carrier in the market. National has estimated that in 1962 with Northeast operating in the Florida markets it would have an operating profit of $2,131,558 and, after interest payment, a net income of $662,588 for the long-haul East Coast-Florida service. National had also estimated that in the event Northeast is not renewed south of New York, it would receive in 1962, after interest and income tax payment, a net profit of $4,365,683, or a difference of $3,703,095.

Eastern. Eastern submitted a forecast of traffic for only the year 1962 with and without the third-carrier competition. It based its 1962 estimate on the on-line O & D passenger traffic with an 8 percent growth for the last seven months of 1962 over the last seven months of 1961. The actual number of passengers for the first five months of 1962 were used by Eastern. The carrier estimates that the East Coast-Florida markets will generate 1,933,392 passengers in 1962 or 12 percent increase over 1961. Eastern estimates that it will carry 60 percent of the New York-Miami traffic if Northeast is renewed and 69 percent if not renewed, and that it will carry 75 percent of the Boston-Miami traffic if Northeast is not renewed, as compared to 40 percent if renewed. Eastern also estimates that if Northeast is renewed to Florida in 1962, it would have an operating profit of $5,242,000 and if Northeast is not renewed, it would have an operating profit of $11,283,000, representing a difference of $6,041,000 without the competing service.

The Bureau. The Bureau has estimated that in 1963 the East Coast-Florida markets will generate 1,991,264 passengers assuming nonrenewal of Northeast's temporary authority based upon on-line traffic in the various markets as compared to an estimated 1,896,447 for 1962. It is estimated that in 1963 without Northeast in the Florida market Eastern would carry approximately 60 percent of the above total traffic and National 40 percent. It is also estimated by the Bureau that Eastern would carry 70 percent of the Boston-Florida traffic and 60 percent of the New York-Florida traffic in the event Northeast is not renewed. The Bureau did not forecast any increase or decrease in traffic for the various Florida markets due to the third-carrier competition or lack of it. The Bureau has estimated that, in the event Northeast is renewed, Eastern will carry in 1963 approximately 51 percent of the above estimated total traffic, National 26 percent, and Northeast 23 percent.

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Northeast. Northeast estimated that in 1963 the total East Coast-Florida markets will generate 2,111,902 on-line passengers and of this total Northeast would carry 26 percent if renewed, or 551,664 passengers. The carrier has also estimated that the New York-Miami market will generate 1,240,487 passengers in 1963 and that its share of this market would be approximately 22 percent or 274,532 passengers.

Northeast's estimate is based upon the historic relationship between Gross National Product (GNP) and past traffic trends. The forecast was based upon the enplanements and deplanements of passengers at Miami Airport for the fiscal years ended June 30, 1955, through 1961 and it was found that the enplanements and deplanements increased or decreased by 4,000 passengers quarterly for each one billion dollar change in GNP at annual rates. It was on this basis that Northeast forecast its 1963 traffic potential for the Northeast-Florida markets.

Northeast anticipates that in 1963 its total operating revenues will be approximately $59,114,000 and its operating expenses $55,145,000, resulting in an operating profit of $3,969,000, based upon the above traffic forecast with its full system renewed. The carrier estimated that in the event its system is only renewed north of Washington this would result in a $3,520,000 loss in 1963, and that the nonrenewal of the temporary route would result in an operating loss in 1963 of $4,532,000.

Position of Parties:

Northeast:

Northeast contends that the need for a third carrier in the East Coast-Florida markets was fully resolved by the Board in the prior decision holding that such service was needed and that the Board did not indicate it would take a second look into the need for service, but rather left open for later determination the permanent certification of Northeast in these markets after viewing the carrier's performance in serving the public need and rendering competitive service in the Florida markets.

It is clear that the issue of additional service in the above markets is one of the issues to be resolved in this proceeding. Northeast takes the position that a continuing need exists for additional service in the New York-Florida markets. Northeast calls attention to other markets where the Board has authorized service by more than three carriers thus favoring multiple competition in developing air traffic over the various route systems of the nation's air carriers.[10] The carrier points out that the New York-Miami/Fort Lauderdale market generated in 1961 more passengers than Los Angeles-San Francisco and New York-Chicago markets, where the Board has approved four-carrier competition. It is pointed out that in addition to the Miami market indicated above there are other long-haul side Florida markets involved herein that rank among the top 50 traffic pairs in the United States in terms of passenger-miles[11] and that these Florida long-haul side markets generated more passenger-miles than five other markets where the Board has authorized three-carrier service.[12]

Northeast further contends that the additional service supplied by the third carrier in the Florida markets has remedied many deficiencies that the Board found existing in the prior decision. This particularly applies to the side Florida markets, such as New York-Tampa, Boston-Miami, and Philadelphia-Miami where nonstop service was not provided until these markets were threatened with third-carrier competition. It is pointed out that the Florida markets have shown a gradual and healthy increase in traffic during the years following the Board's decision with the exception of 1957 and 1958. And the carrier expects this growth to continue during the foreseeable future.

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[10] The markets referred to are: New York-Detroit; Chicago-San Francisco; Chicago-Denver; New York-Atlanta; and New York-New Orleans.

[11] Boston-Miami/Fort Lauderdale, New York-Tampa, Philadelphia-Miami/Fort Lauderdale, and Washington-Miami/Fort Lauderdale.

[12] New York-Atlanta, New York-New Orleans, Chicago-Denver, Chicago-Tampa and Chicago-Atlanta.

It is also pointed out by Northeast that not only will the Florida markets sustain economic multi-carrier competition, but in addition will afford all three carriers highly satisfactory earnings.

National:

The positions of both National and Eastern can be briefly summarized as being unalterably opposed to a third carrier in the East Coast-Florida market and for that reason all applications for such additional service should be denied.

National points out that Northeast's service over its temporary route has not been a success in generating traffic in the Florida markets as the traffic since the Board's prior decision in 1956 has not increased in accordance with the expectations expressed by the Board in its decision. National points out that the traffic growth in the Florida markets over the intervening five-year period has averaged less than two percent per annum over the previous annual period. Further, the New York-Miami market has averaged even less than the total markets over the same period of time. The carrier further points out that many of the justifications expressed by the Board in its opinion supporting the authorization have not materialized. These considerations deal primarily with Northeast's financial status. It is also pointed out by National that due to the increased carrying ability of the jet and the faster speed of the aircraft, the need for a third carrier in the Florida markets cannot be justified under present operating schedules and that the earnings of National, as well as Eastern, will be adversely affected by the continuation of a third-carrier competition.

***Eastern*:**

Eastern contends that the past history of the East Coast-Florida traffic clearly demonstrates that a third carrier is not required to serve adequately the traveling public and that Eastern, together with National with their jet equipment, can accommodate all of the long-haul traffic in these markets for the foreseeable future.

Eastern considers its New York-Florida segment the "bread basket" route for its entire system and that any competition authorized in this market would adversely affect Eastern's public service responsibility over its entire system. Eastern contends that the third-carrier competition over the New York-Florida route has produced unsound economic conditions in that all three carriers do not have the opportunity to earn fair and reasonable returns on their investments whereas two carriers serving this market would have an opportunity to offset losses or marginal earnings on other segments of their route systems. Eastern points out that in 1962, assuming renewal of Northeast, it would have an operating profit of $5,242,000 over routes competitive with Northeast and assuming as Eastern did that that remaining system produced only five percent return on investment, then the revenues from Eastern's New York-Florida route would be required to produce a fair and reasonable rate of return for its entire system.

Civic Intervenors:

The position of the civic interests of New England that intervened in this proceeding seems to be expressed fully by the position of the New England Conference of State Aviation Officials as follows:

> "a. A large majority of the local service in New England is provided by, and only by Northeast." and
>
> "b. Whether or not Northeast is permitted to continue to operate south of New York will not only affect Northeast's financial ability to provide adequate service within New England, but may affect its ability to provide any service at all."

The civic parties intervening on behalf of the Florida cities served by the proposed route favor the retention of a third-carrier service except St. Petersburg. Tampa desires a third-carrier service in the event such authorization does not disturb in any way the certificates of Eastern and National.

The Bureau:

The Bureau's position in this proceeding as it pertains to the need for a third-carrier service in the East Coast-Florida markets is not clear. It appears to recommend that Northeast's Route 27 south of New York be renewed for the lesser of three years, or 60 days after issuance of a final order in an expedited proceeding to be instituted by the Board to determine, among other things, do the public convenience and necessity require suspension of any carrier operating in the following markets: Boston/Philadelphia/Baltimore/Washington — Jacksonville/Tampa/Fort Lauderdale/Miami. If so, which carrier? Presumably the Board at the same time as it decides the above issues, would contemporaneously determine without further hearing whether Northeast's New York-Miami authority should be renewed for an indefinite period.

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The Board in the original *New York-Florida Case, supra,* expressed no doubt about the ability of the New York-Miami route to support three-carrier service. It indicated that the traffic growth in this market as well as the other Florida markets had not reached a plateau and that it expected a rapid traffic growth to continue for the immediate future. The Board pointed out that while the existing service in the Florida markets was not inadequate within the meaning of section 404 of the Act, nevertheless, the evidence before the Board disclosed that existing service in the above markets was not meeting the public need and that the record disclosed many inconveniences on the part of the public in long waiting periods between the time of making reservations and actual date of departure. The Board estimated in its opinion that by 1956 the above markets would generate in the neighborhood of three million passengers and two billion passenger-miles annually. This expected growth did not materialize within the above time. As heretofore stated, during the years immediately prior to the Board's decision, the Florida markets had experienced a rapid increase in traffic. The number of passengers in 1955 exceeded 1954 by 24 percent, and 1956 exceeded 1955 by nearly 15 percent.

Beginning with 1958[13] the total Florida markets had a drop in the number of passengers generated by a decrease of 8.0 percent and although in 1959, the best year for the

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[13] See Appendix I.

Florida carriers, the market was up 20.3 percent; however, this was not maintained in the years to follow. As indicated in 1961 and 1962, the total market growth had dropped to 1.9 percent and 2.2 percent, respectively, resulting in an average annual rate of growth of 1.6 percent for the total Florida markets during the period of five years. The New York-Miami/Fort Lauderdale market in 1962 showed an increase over 1961 by 2.7 percent and an overall annual rate of growth for a five-year period of 0.9 percent.

It was during 1958 that the Florida markets, particularly the New York-Miami and New York-Jacksonville markets, suffered their worst setback traffic-wise. It is argued by Northeast that the decline in the traffic was due to the strikes occurring during the winter season involving both Eastern and National as well as adverse weather conditions during this period. In addition to the above conditions, the nation underwent a general business recession. There is no doubt but what all of these elements have their influence upon the traffic in any market. Such conditions would particularly be noticeable in a recreational or vacation market such as the Florida markets as they are sensitive to weather conditions as well as the economic conditions of the country. In the latter case, the dollars to be spent for the average traveler for recreational or vacation purposes will be spent instead by the traveler for other more important things in life.

Again, it must be noted that the use of modern jet equipment has changed to a large extent the travel habits of the vacationer. In the past Miami was the only large vacation area within a few hours' traveling time from New York by the use of piston type equipment. Today, with the use of jet equipment, Miami must compete with such places as Phoenix, Ariz., Puerto Rico, Bermuda, and the Virgin Islands. All are within less than a day's traveling time from New York. Therefore, the above elements do no doubt influence the traffic in the Florida markets to a varying degree and the future traffic of these markets will not show as great an increase as during the past years. * * * it does appear from a review of the historic record of traffic in the East Coast-Florida markets that these markets are reaching maturity, leveling off around 1 to 5 percent annual rate of increase or decrease depending on usual circumstances affecting traffic in these markets heretofore discussed.

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It has been noted that over the long pull, the Florida markets have experienced an increased annual growth rate of 1.58 percent.[16] Therefore, using the most conservative approach and the minimum basis for a traffic estimate on this record, the above average growth rate has been applied resulting in an estimate of approximately 1,791,000 passengers as representing the potential Florida markets in 1963, resulting in nearly two billion passenger-miles.[17] As stated, the estimate could very well exceed the above number of passengers by at least 5 percent.

The New York-Miami/Fort Lauderdale market in 1963 should generate in the neighborhood of 990,000 passengers producing over one billion passenger-miles[18] resulting from an annual average growth rate of 0.9 percent over the past five-year period.

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[16] See Appendix I, p. 2.

[17] See Appendix III.

[18] 1,072,670,000 passenger-miles. The 990,000 annual passengers were obtained by increasing the number of passengers by 0.9 percent, the average rate of growth for a five-year period. Applying the total Florida rate of growth of 1.58 percent the 1963 estimate would be 997,000 passengers.

The important issue of this case as to whether the public convenience and necessity require the continuation of a third-carrier service between the Northeast and Florida presents itself here for determination. The historic record of the traffic is a matter that has heretofore been discussed and the future volume of traffic for these markets has been estimated and discussed. Northeast contends that without the additional competition of a third carrier in the Florida markets many of these markets would suffer for lack of service particularly nonstop service reverting back to the days prior to the Board's decision in the *New York-Florida Case, supra,* where the Board considered the existing inadequacies of these markets. On the other hand, the intervening carriers, namely Eastern and National, contend that the total traffic of the Florida markets will not support additional service beyond that supplied by the two carriers. And in the event the traffic should in the future warrant additional service, these two carriers could supply the requirements.

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Perhaps no other carrier in the history of the industry has been plagued with more adverse circumstances in its operations than Northeast since the Board extended its routes from the New England area into Florida in the *New York-Florida Case, supra.*

The above action on the part of the Board converted Northeast, a local type operator providing air service in noncompetitive markets, to the rank of a trunk carrier overnight in markets where competition was keen and the change in operation was most severe to Northeast. History has proven that these markets under consideration are not for amateurs but require service of established carriers with organization and financial ability to compete on the basis of any rules of the game. The record of Northeast's operations in the Florida markets indicates that it was not equipped to meet the competition nor provide the service for which it had been certificated. The Board expressed hope that Northeast would overcome its weaknesses as stated in its decision.[23] However, expressing

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[23] *New York-Florida Case, supra*, at page 100, 102-103;

"We have selected Northeast as the third carrier. Northeast is the only domestic trunk system which today requires subsidy. Extension of Northeast to Florida will, in our judgment, eliminate the carrier's current subsidy need of more than $1.5 million annually and at the same time enhance the carrier's ability to provide needed short-haul services within the New England regional area which it now serves. * * *

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"The question has been presented as to whether Northeast will be able to compete effectively with National and Eastern. We have no doubt on this score. We recognize that successful entry into markets dominated by Eastern and National, with additional competition over some segments with American and other strong trunks, will not be easy. However, it has been amply demonstrated that small carriers can compete with larger ones, and that given access to markets of adequate traffic density, sound route structure, and the exercise of sound managerial judgment, over the long run, a small carrier can obtain a fair share of the markets involved. * * *

"We are also satisfied that Northeast's operation will be a profitable one. The Atlantic coast route is expected to develop almost 2 billion revenue passenger-miles and about 3 million passengers in 1956. With a market of such potential and with the record showing that the carriers currently serving the market have difficulty in meeting the demands for service, we are convinced that a carrier with Northeast's experience, with reasonably competitive equipment and adequate management, will obtain a sufficient share of the traffic to permit it to conduct a profitable operation. Our decision would have the effect of increasing Northeast's traffic density per station from an average of 340.2 revenue ton-miles per station to 1,407.4 and the average length of passenger journey from 200 miles to 452. In these vital respects, Northeast's new system will compare favorably with those of the other some concern over Northeast's future, the Board has this to say with respect to the duration of its certificate:

> "We are next confronted with the question of the duration of the authorization to be granted Northeast. While we have confidence in the undertaking, we recognize that in extending the carrier to Florida, we are in substantial measure changing the character of this carrier's operation. Accordingly, we shall not make the route extension permanent but shall limit its duration to 5 years, after which we can again review the matter and consider further the requirements of the public convenience and necessity."

The history of Northeast's operations in the Florida markets has not met the predictions that the Board held out for it in its decision. This has not been due to the lack of effort on the part of Northeast to provide all the service in all the markets to the best of its ability, but rather the lack of financial ability to acquire the necessary equipment at the time competition required it. Northeast's entry into trunkline operations occurred at a time when the jet equipment was being introduced into the industry requiring as it did unprecedented financial demands for equipment on the part of all trunk carriers as well as unprecedented working capital. Thus, Northeast, the holder of a temporary authority, was confronted with the nearly impossible task of obtaining finances with no history of previous earnings from operations similar to those in the Florida markets.

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medium size trunks now operating without subsidy, and accordingly it could reasonably be anticipated that it will also achieve self-sufficiency."

Northeast commenced its Florida operations in 1957 with ten DC-6B's purchased from loans made by a group of banks headed by The Chase Manhattan Bank with the assistance of the Atlas Corporation. In addition, Northeast entered into certain arrangements for the purchase of five Bristol Britannia turboprop aircraft, but this proposed purchase did not materialize because of design difficulties which delayed certification of the aircraft beyond the period that Northeast was willing to wait as the pure jet equipment was then entering the Florida markets.

In 1958 National instituted jet service by the use of Boeing 707's leased from Pan American[24] and it was the use of this equipment that dealt Northeast a crippling blow in its efforts to break into the Florida markets.

During 1958 Northeast was again confronted with a serious problem as it knew that it would not have the proper equipment to meet competition in the Florida markets and as heretofore stated conventional financing of jet equipment was not available to it since it held only a temporary authority without any historic record of profitable operation. It therefore had to turn to other means of identifying itself in the newly acquired markets. The carrier realized that it must gain strength and be recognized at an early date in order to be identified in any of the markets to be served. Therefore, it made use of its 6-B aircraft by concentrating on the shorthaul markets. During this period (1958) it acquired ten Viscount turboprop aircraft in accordance with certain provisions of an equipment trust agreement entered into with the

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[24] *Pan Am. World Air. and National Air., Agreements,* 27 C.A.B. 611 (1958).

Irving Trust Company as trustee, secured by a second mortgage on Northeast's aircraft fleet. This equipment was used in the short-haul markets and met with success as the carrier provided in most of the markets more frequent service than its competitors and succeeded in capturing the Boston, Philadelphia, and Washington markets by 1961.

Successful as the above participation was, Northeast was still confronted with the necessity for effective entry into the long-haul Florida markets. To accomplish this it was compelled to lease during the latter part of 1959 one Boeing jet aircraft from TWA which was operated on a one daily round trip basis between New York and Miami to be supplemented later with additional equipment under lease.

The above arrangements continued until the latter part of 1960 when Northeast inaugurated its Florida service with Convair 880's leased from General Dynamics and General Electric. This additional expansion of equipment on the part of Northeast required considerable financial assistance beyond the amount Atlas Corporation was willing to supply.[25] The carrier then prevailed upon Hughes Tool Company, hereinafter called "Toolco", for loans in the amount of $9.5 million. The above equipment was not all made available until after the winter season of 1960-1961. Therefore, the carrier was unable to obtain working capital during the off-season of 1961 to carry it through the 1961 winter season and it was again faced with a critical financial problem, as it was without funds and had fallen in arrears with a large number of secured and unsecured creditors. In other words, it was in serious financial difficulties as it was forced to curtail nearly all advertising, to seek moratorium arrangements with equipment secured creditors, and to seek emergency financial assistance beyond that already advanced by Atlas and Toolco. Additional financing was required and Northeast was compelled to turn once again for assistance to Toolco, resulting in an agreement under which Toolco was to purchase from Atlas the controlling stock interest in Northeast and to provide the financial assistance needed to maintain the carrier's operations. This control agreement dated December 28, 1961, was presented to the Board for approval in the *Toolco-Northeast Control Case,* Docket 11620, decided June 19, 1962, hereinafter referred to as the *Control Case.* The Board found in this case that the above agreement would give Toolco control of Northeast and that such control would not be inconsistent with the public interest and would not create a monopoly, restrain competition, or jeopardize another air carrier not a party to such control, subject to certain conditions.

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[25] Atlas Corporation had by this time invested $18.5 million into Northeast's operations.

The above agreement and the indebtedness of Northeast was discussed at length by the Hearing Examiner and the Board in the above case and need not be considered in detail here except to note that by June 1962 Northeast had nearly $9,500,000 in trade debt all overdue and in addition it owed $1,800,000 to The Chase Manhattan Bank and $7,000,000 to Vickers for the Viscounts which were in arrears, as well as rental payment to General Dynamics and General Electric for Northeast's jet fleet. The total obligations which Toolco was being asked to finance amounted to around $27,000,000. Toolco offered to subordinate the above amount as well as future amounts to the claims of trade creditors who would agree to accept three to five-year promissory notes from Northeast for their debt with repayment of principal to begin January 1963 on the three-year notes with amortization over 36 months, or a five-year obligation payable over six months commencing January 1963 and the additional privilege of converting the unpaid balance into Northeast's common stock at any time at $3.625 per share (the conversion price on the Northeast debt which Toolco holds). All creditors were contacted and for the most part accepted the above plan. To assure Northeast with working capital Toolco arranged for a revolving line of credit from the Chase Manhattan Bank in the amount of $3,500,000 approved by the Board. (See Order E-18831, dated September 27, 1962.) The above amount is to be increased by Toolco if found necessary. Toolco has agreed to waive all interest for 1963 on Northeast's debt and in addition it has leased to Northeast two 880's for use during the peak winter season.

As heretofore stated, the odds against Northeast's survival in the trunkline field were overwhelming and were becoming worse year by year. From the beginning Northeast had huge operating losses. In 1957 the operating loss was over $4,000,000, in 1959 over $5,500,000, and in 1961 the operating loss was over $8,000,000. As indicated, it was not until 1961 that Northeast had its full jet fleet in operation and as a result of the financial support by Toolco it was again in a position to advertise its service in all the markets and as a result of this the carrier expected a higher participation in the various markets, particularly the Florida markets, resulting in profitable operations by the end of 1962.

Northeast has failed to obtain its share of the New York-Miami market since its entry and contends that various reasons such as a severe winter season in 1958-1959 and a recession occurring in this period prevented it from obtaining its share of the market. Northeast further contends that in 1962 when it had its full jet fleet in operation, it had expected to reach its full share of the market but for the fact Eastern added during the 1961-1962 winter season two daily round trip flights with two DC-8's leased from Pan American increasing its nonstop jet daily flights from 10 to 14 or increasing its capacity by nearly 87 percent over its 1961 capacity.

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The various reasons advanced by Northeast for its failure to meet its full participation prior to 1961 were due primary to its lack of proper equipment, and the lack of adequate finances. The other factors advanced by Northeast occur in any market and affect all carriers to a differing degree.

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During Northeast's critical financial situation and equipment shortage it had concentrated its efforts on the commuter markets, particularly the New York-Washington and New York-Boston markets, and by 1961 it had achieved 22.8 percent of the New York-Boston market and 18.6 percent of the New York-Washington market. And in the Boston-Washington market it was carrying 75 percent of the traffic. In 1962 after Eastern had inaugurated its so-called shuttle service in the New York-Washington and

New York-Boston markets featuring an assured seat on a non-reservation basis, at reduced fares on an hourly basis, Northeast's participation began to drop. As a result in the New York-Washington market for 1962 Northeast's participation dropped to 7.9 percent and in the New York-Boston market its participation dropped to 18.6 percent. However, Northeast has been holding its lead in the Boston-Washington market as in 1962, it carried 70 percent of the total traffic.[26]

During 1962 Northeast reduced its service in the New York-Washington market in the face of growing financial losses. In the meantime Eastern had succeeded in capturing over 50 percent of the traffic with its shuttle-type service.

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Northeast argues that as a result of the shuttle operation by Eastern it continues to operate at a loss in the above markets. There is no evidence of record that the type of service conducted by Eastern is not within the provisions of the Act or the Board's Regulations and therefore cannot be stopped in order for Northeast to make a profit.

The Board in the *New York-Florida Case, supra,*[27] stated that as a result of its decision it expected Northeast to further develop the New England-Florida traffic and at the same time improve its service within New England by increasing its volume of service. Further, the Board stated that Northeast's seasonal imbalance of traffic during the summer season in New England would integrate into the Florida operations to an advantage resulting in better utilization of equipment and more profitable operations for the carrier. The Board's expectations have not materialized except to the extent that Northeast has added larger equipment in its service in the New England area. However, it is noted that the frequencies of schedules in this area have been reduced.

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[26] See Appendix IX.

[27] See footnote 23, page 76a.

It was estimated in the above case that in 1956 there would be 36,000 New England passengers in need of one-carrier service to the Florida points and that this number would double with the first year of operations, producing a total of 72,000 passengers. In 1961 there were approximately 7,000 single-carrier passengers from Northeast's exclusive New England points not including Boston, to all of the Florida points or 19 daily passengers. This does not include any New England passengers that may have been ticketed out of Boston for Florida destinations.

During the above year the commuter markets, i.e., Philadelphia, Baltimore, and Washington, and the above New England points served by Northeast contributed 34,000 passengers to the carrier's system or 94 daily single-carrier passengers. All of Northeast's New England traffic except Boston does not today have single-plane service to the Florida points, as all the above traffic moves by connections through the Boston or New York gateway.

Northeast's seasonal imbalance of traffic has not been solved as the carrier has been unable to integrate its three types of operation, namely, long-haul, short-haul, and local-type routes, due to the equipment which the carrier has been compelled to purchase because of circumstances heretofore discussed. The jet equipment now used on the long-haul routes is not suitable for the short-haul or local service routes in New England nor are the Viscounts suitable equipment for the local service points. Northeast has been forced to use its DC-6B's in the New England service. These aircraft are not suitable for short-haul operations and therefore instead of full seasonal integration as expected, the results have been adverse in that Northeast has been required to operate equipment that did not fully meet its service responsibilities resulting in a more expensive operation affecting the financial status of the carrier.

All in all Northeast's financial position became worse with the passing of time until the end of 1961 when it found itself in an insolvent position. Its debts including operating debts were beyond its ability to pay as acknowledged by Northeast when it sought interim relief from the Board in the latter part of November 1961. As stated by Northeast it found itself in a position where it could not meet its daily expenses including fuel cost for its aircraft. As pointed out by the Board in the *Control Case*, if Northeast did not secure at that time emergency financing it would be forced into bankruptcy with cessation of all operations on the part of Northeast. For this reason the Board found that the approval of control by Toolco of Northeast was not inconsistent with the public interest. Therefore, approval was granted and Northeast ceased to be a viable legal entity in its own right. Its destiny was no longer within its power to control. The future policy decisions were to be made by Toolco rather than by Northeast's management.

Northeast has reporteed an operating loss for 1962 of over \$5 million.[28] For 1963 it has estimated in this proceeding that it will have an operating profit of nearly \$4 million. This estimate cannot be supported by the record.

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[28] Preliminary report for annual period ending December 31, 1962, submitted by Northeast.

Northeast contends that block-to-block hours as forecasted in its financial exhibits received in evidence in this proceeding represent total block-to-block hours inclusive of revenue block-to-block hours, plus nonrevenue block hours. On the other hand, the Bureau contends that the block hours forecasted represent revenue block-to-block hours only exclusive of nonrevenue operations.

The Bureau's approach appears reasonable and consistent with past procedures in like cases. Therefore, it will be followed here. However, since there exists a difference of over $1 million, the two approaches have been compiled based upon Northeast's actual revenue passenger-miles for 1962 increased by the average annual traffic growth in the combined commuter and long-haul markets.[29]

It is estimated that for 1963 Northeast would again suffer an operating loss in conducting its present operations of $4,871,000.[30]

If Northeast's total block-to-block hour approach should be accepted then the carrier would have an operating loss of $3,767,000.[31] In either case, the carrier could not be expected to regain solvency in the foreseeable future where it would be in a position to pay off its past debts as required by its relationship with Toolco. For instance, in 1963 alone it has been estimated that Northeast's nonoperating expenses would approach or perhaps exceed $5 million involving its past debts.

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[29] See Appendix II.

[30] See Appendix VII.

[31] See Appendix VIII.

Delta Air Lines, Inc. (Delta) has two separate requests consolidated in this proceeding for consideration. First is the request that a present restriction in the carrier's certificate be amended so as to permit it to operate the same aircraft between the northeastern points contained in its certificate and Florida points via a mandatory stop at Atlanta, Ga. At the present time the carrier cannot provide through plane flights between these points even though the service is via Atlanta. The second request is that Delta proposes in the event Northeast's temporary authority is not renewed, and the Board should find a need for additional service in the East Coast-Florida markets, that Delta be authorized to provide a limited seasonal operation in the New York-Miami/Fort Lauderdale market during the Christmas-New Year holiday period and between February 1 and April 30 of each year, known as the Florida winter season.

Delta estimates that it would carry during a typical year approximately one percent of the total Florida traffic in the markets under consideration via the Atlanta stop. Delta also estimates that in a typical year it would carry in the New York-Miami/Fort Lauderdale market during a seasonal operation as described 39,428 passengers out of a total for the season of 415,896 passengers. The carrier also estimated that Delta would generate during a typical year 12,693 passengers via a one-stop service in all of the Florida markets out of a total of 1,268,979 passengers.

The above forecast includes service on a nonstop basis in the New York-Miami/Fort Lauderdale market during the seasonal period and via Atlanta during the remaining period of the year. A further breakdown of Delta's participation in the New York-Miami/Fort Lauderdale market indicates that it would participate in 10 percent of the nonstop traffic during the period between February 1 and April 30 of each year; 7.5 percent of the nonstop traffic during the period from December 15 to January 10; and one percent via Atlanta during the remainder of the year.

Delta would provide two daily nonstop round trip flights in the New York-Miami/Fort Lauderdale market. The southbound flights during the period between December 15 and January 10 would be via CV-880 providing day and night coach accommodations leaving New York at 4 a.m. arriving in Miami at 6:35 a.m. and the other flight leaving New York at 10:40 p.m. arriving in Miami at 1:15 a.m.

The northbound flights during the above period of time with the same type of equipment and providing the same kind of service would leave Miami at 3 a.m. arriving in New York at 5:25 a.m. and the other flight leaving Miami at 4 a.m. arriving in New York at 6:25 a.m.

During the period between February 1 and April 30 the proposed nonstop service would be provided with DC-8 equipment. One of the southbound nonstop flights would leave New York at 3:10 a.m. arriving in Miami at 5:50 a.m. providing day and night coach service. The other southbound flight providing first class and day coach service would leave New York at 3:15 p.m. arriving in Miami at 5:55 p.m. One of the northbound flights during the above period would provide first-class and day-coach service leaving Miami at 10 a.m. arriving in New York at 12:30 p.m. and the other northbound flight would provide coach service leaving Miami at 11:15 p.m. arriving in New York at 1:45 a.m.

Delta estimates that the above type of operations would provide an operating income from the nonstop flights of $1 million and its Atlanta flights would yield a half million dollars annually.

It is Delta's position that should the Board find a need for a third-carrier service in the New York-Florida markets then Delta requests that its proposed seasonal operations heretofore discussed be considered in providing limited amounts of regularly scheduled nonstop service during the peak periods of the year (Christmas-New Year holidays and the winter season, February 1 through April 30, in only the New York-Miami/Fort Lauderdale market) and withdrawing itself from the nonstop markets during the off season.

The removal of a route restriction which now prevents Delta from operating a through-plane service between Florida points and points north of Washington would enable the carrier to offer through-plane service with a mandatory stop at Atlanta.

Delta contends that the removal of this restriction is necessary to achieve greater maintenance flexibility between its Atlanta and Miami overhaul bases. Delta has offered no convincing evidence that it was having any difficulty with its present maintenance setup or that its present maintenance arrangement is affecting its service responsibility to any degree.

Delta contends that in the event the restriction is removed it would only participate in the New York-Florida market by one percent in view of its one-stop versus nonstop service. Delta estimates that the one-stop service would yield $600,000 annually in revenues. The above amount seems extremely low in view of the fact that Delta now having sales offices in the northeastern cities could by extending its sales activities generate much more than one percent of the traffic even though one-stop service would be involved, especially as it could advertise through-plane service.

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Braniff's application consolidated in this proceeding involves a proposed route between New York and Miami via Washington, D. C.

Braniff's position is that the New York-Miami market requires a three-carrier service due to the size of the market and for continued growth. Braniff points out that it now serves New York, Washington, and Miami on its different routes and consequently that the proposed service would integrate within its route system. The carrier points out that its beyond-area international traffic through the Miami gateway will lend considerable support to its proposed operations. The carrier proposes 14 jet daily flights in the New York-Miami market, ten of these flights would be through flights from New York to Miami, and the remaining four flights would be via Washington. Braniff states that it now has the lowest traffic density routes of any of the trunk carrier parties in this proceeding and that the New York-Miami market would give Braniff the additional strength it needs for a well-balanced route system.

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Consolidated in this proceeding is an application of Pan American requesting authorization to engage in air transportation between Boston/New York and Miami via

Philadelphia, Baltimore and Washington subject to a long-haul restriction.

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Pan American indicates that in 1960 there were 173,000 international passengers that moved over the New York-Florida route which represented some $12 million in revenues. Therefore, if Pan American was authorized to provide the requested service even though restricted to foreign air transportation it would capture most of this renevue to the adverse interest of the domestic carriers operating over the above route. Further Pan American's authority would end the Pan American-National-Panagra interchange arrangement resulting in serious injury to National. Such diversion cannot be justified on this record. Therefore, in view of all the facts of record, it is found that Pan American's application should be denied.

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Allegheny

The applications of Allegheny Airlines, Inc. (Allegheny) involving nonstop authority between New York/Newark-Washington, New York/Newark-Baltimore, and Boston-Philadelphia have been consolidated in this proceeding for consideration.[34]

Allegheny now holds a restricted one-stop authority in each of the above markets. The service proposed here is similar to that provided by applicant in the Pittsburgh-Philadelphia market known as the "commuter express service." It provides both a reservation and no-reservation service on the same aircraft. The no-reservation service eliminates the waiting period at the airport for tickets and weighing of baggage. The collection of fares is done on board the aircraft. This type of service differs from the "shuttle" service by Eastern in that no guarantee is made to the traveler for seat accommodations. Therefore, no standby equipment or crew is required for the no-reservation passenger.

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[34] Dockets 11419 and 12703.

The nonstop flights as proposed by Allegheny would be turnaround flights serving the commuter traffic. The carrier proposes to use 52-passenger Convair 440 aircraft.

New York-Washington Market. Allegheny seeks to become the ninth carrier with nonstop authority in the above market and the fifth carrier with unrestricted authority.[25] It is Allegheny's position that this mass commuter market has a great undeveloped potential that could be developed by it with the no-reservation type of service which would appeal to the "commuter" since it would not involve any delay at boarding time. It is argued that much of this potential traffic is now moving by surface means and that the airlines in 1960 captured less than 7 percent of the above market. The reason advanced for this small percentage of the total potential market by the airlines is due to the higher cost of air transportation as compared to the surface transportation and this fact alone had a depressive effect upon the development of the traffic in this market.

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[25] Allegheny, American, Braniff, Delta, Eastern, National, Northeast, Trans World and United. Braniff, Delta, TWA and United have long-haul restrictions.

In 1957 there were 829,000 O & D passengers and in 1960 this market had only increased to 892,000 passengers. In 1961, the year that Eastern introduced its "shuttle" service, this market increased to 996,000 or 11 percent over 1960. In 1962 the market had reached 1,201,000.

This market has in the past been divided principally between three carriers, namely, American that carried 31 percent of the total traffic in 1960, Eastern with 35 percent, and Northeast carried 18 percent.[36]

In 1962 after the introduction of the shuttle service by Eastern, the above participation on the part of American and Northeast had dropped to 18.5 and 7.9 percent, respectively.

Allegheny points to the above increased participation on the part of Eastern with its new type of service as having a particular appeal to the mass traffic movement in a commuter market and that the number of carriers in such a market has little to do with the development of traffic especially by long-haul carriers where their flights are geared to long-haul traffic.

Allegheny proposes seven daily round trips with Convair 440's between the Newark Airport and National Airport in Washington leaving both terminals every other hour beginning at 8 a.m. The flight times would be 1:09 northbound and 1:15 southbound as compared to Eastern's shuttle time of 1:05 and 1:10, respectively. Allegheny has estimated that in 1963 its proposed nonstop service in this market will generate approximately 116,000 local passengers including 7,000 interline connecting passengers, producing a profit to the carrier of $250,000 as compared to a loss of $92,000 estimated by the Bureau for 1963 on the basis of 100,000 passengers being generated by Allegheny. It is estimated by Allegheny that in 1963 the total market will generate approximately 947,000 passengers, whereas the Bureau estimates a market of somewhat over 1,000,000 passengers representing 7 percent growth in the market. The Bureau has attributed no stimulation to the market due to Allegheny's new type of service of 14 daily flights whereas Allegheny estimates that it will stimulate the market by 2.2 percent and would enjoy an 11 percent share of the total market as compared to 8 percent estimated by the Bureau.

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[36] See Appendix IX.

Allegheny points out that much of the difference between its financial estimate for 1963 and the Bureau's lies in the indirect costs where the Bureau estimates indirect costs of $887,000 as compared to $535,000 by Allegheny, or a difference of over $350,000. It is also pointed out by Allegheny that the Bureau has overstated the carrier's investment requirements. The carrier has estimated that its nonstop service in this market would require $1,125,000 additional capital including two additional Convairs whereas the Bureau has estimated 2.5 additional aircraft plus 50 percent allowance for related ground equipment, representing a total of $1,538,000 additional investment.

New York/Newark-Baltimore. Allegheny proposes the same type of service for the above market as in the New York-Washington market, i.e., nonstop no-reservation service. The above market in 1961 generated 109,000 O & D passengers as compared to 87,000 during 1959 and 1960 and in 1962 it generated 130,000 passengers.[27] The passenger increase during the recent period has no doubt been due to the Board's decision in the *Washington-Baltimore Adequacy of Service Investigation,*[38] where it found certain inadequacies in air service existing in the Baltimore-New York market. The above market is served by six carriers.[39] However, Eastern has enjoyed the largest participation in this market through the past several years. In 1961 Eastern's participation was 59.6 percent, National 17.9 percent, and American had 11.5 percent. These three carriers were the dominant carriers in the market.

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[27] See Appendix IX.

Allegheny points out that over half of the present Baltimore flights use Idlewild Airport for the New York/Newark service and that during certain periods of the day there are no Newark flights from or to Baltimore and that the market is without turnaround service.

During recent years Baltimore has received the benefits of large jet equipment operating in and out of Friendship Airport serving both Baltimore and Washington. However, it is feared by Baltimore that it may now lose some of this service since the Washington jet service will be from Dulles Airport. It is pointed out by Allegheny that Eastern has recently reduced its schedules at Baltimore moving some of its Friendship flights to Dulles Airport. The New York-Baltimore market is a short-haul or commuter market involving a distance of approximately 170 miles and is served by long-haul carriers where emphasis is placed on long-haul flights.[40]

Allegheny proposes to provide nonreservation service with its Convair 440's in the Baltimore service providing three daily nonstop round trips and a fourth flight originating and terminating at Washington. All flights will serve the New York area through the Newark Airport and the proposed fare will be $10.00 as compared to $15.35 by jet coach and $17.30 first class.

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[38] Docket 8148, Order E-15162, April 29, 1960.

[39] Allegheny, American, Eastern, National, Northeast, and United.

[40] Except Allegheny that has one-stop authority.

Allegheny estimates that its proposed service will yield an operating profit of $137,000 in 1963 as compared to an operating loss of $172,000 estimated by the Bureau. The difference in the two estimates lies principally in the different stimulation estimates of traffic and Allegheny's participation in the market.

Allegheny estimates that it will carry 62,000 local passengers in the above market in 1963 or about 46 percent of the total local market which Allegheny forecasts will be around 133,000 passengers. The Bureau estimates that the total O & D market in 1963 will be 173,000 passengers and that Allegheny would carry 25 percent or 43,000 passengers. Allegheny has estimated a load factor for this market in 1963 of 52.9 percent as compared to 33.7 percent by the Bureau.

Allegheny points out that again the Bureau has overstated its indirect expenses and required investment as was done with respect to the New York-Washington market.

Allegheny has estimated that its new type of service will not divert substantial traffic from other carriers now serving the market. For instance, it estimates that in 1963 it would divert from other carriers 8,000 passengers representing around $153,000.

Boston-Philadelphia Market. Allegheny proposes to serve this market with the type of service heretofore discussed. The above market is 279 miles in distance and in

1961 generated 167,000 passengers representing an increase of 9.3 percent over 1960. In 1962 this market generated 187,000 passengers.

It is estimated by Allegheny that in 1963 the market will generate 185,000 passengers as compared to the Bureau's estimate of 191,000 including local and connecting passengers. Boston is Philadelphia's second ranking market and Philadelphia is Boston's third ranking market. It is served by four trunklines and one local service carrier, Allegheny Airlines. Eastern and Northeast are the only two carriers that provide nonstop service in this market and Eastern's participation in 1961 was 35.6 percent and Northeast's participation was 53.2 percent. In 1962 the participation of Eastern was 24.6 and Northeast 58.4 percent.

In 1961 Allegheny had a 10.3 percent participation in the Philadelphia-Boston market and in 1962 it was 13.4 percent, placing it third among the carriers serving the market. National's participation through the years has been around 1 percent. Allegheny points out that it provides more flights in this market than any other carrier and as indicated has become a substantial participant despite its one-stop restriction.

Allegheny also points out the need for additional turnaround service as well as additional nonstop service as the majority of the present flights by the trunk carriers are provided on multi-stop flights linking this market with other distant points.

Allegheny proposes three daily round trip flights with Convair 440's in addition to its present multi-stop flights.

Allegheny has estimated that its proposed service would in 1963 net an operating profit of $214,000 as compared to $1,000 estimated by the Bureau. The carrier estimates that its new nonstop service would stimulate the market by 6.7 percent adding 12,500 additional passengers or an overall total of 198,000 passengers. The Bureau has estimated that the proposed nonstop service would stimulate the market by five percent producing a total of 201,000 passengers.

Allegheny has estimated that it will carry in 1963 a total of 55,000 passengers in the above market as compared to 50,000 estimated by the Bureau. It is noted that a large difference exists between Allegheny and the Bureau's operating profits for the proposed operations in 1963 in the amount of $213,000. The difference lies principally in the indirect cost items where the Bureau has estimated indirect expenses at $480,000 as compared to Allegheny's estimate of $299,000. Another factor bearing upon the difference of the two estimates is the participation by Allegheny were it is estimated by Allegheny that its share for 1963 will be 32 percent of the market, whereas the Bureau has estimated Allegheny's share as being 25 percent.

Allegheny points out that again the Bureau has overstated its investment requirements, particularly in the number of extra aircraft needed for the proposed service.

Conclusions—New York-Washington: Allegheny is seeking to enter a market that is highly competitive with service provided by eight trunk carriers. Its proposed turnaround nonstop service would be in addition to that now provided in the market by the above number of carriers. The first-class and no-reservation combination service has been tried by Allegheny in other markets with some success. However, these other markets cannot compare with the market here under consideration with respect to the amount of existing competition.

This market in 1962 generated over 1 million passengers and as indicated it is served by eight trunk carriers all with authority to provide a nonstop service. The record contains no evidence of a need for additional nonstop service beyond that now provided by the present number of carriers, nor does the record contain any evidence for the need for the particular type of service proposed by Allegheny as similar service is now being provided by Eastern on an hourly basis. Eastern's frequent schedules as now provided by its shutfle service have reduced the participation of the other carriers operating in the market. For instance, in 1961 American carried 25.2 percent of the traffic, Eastern 43.2 percent, and Northeast 18.6 percent. In 1962 after the shuttle service by Eastern had gained acceptance, the above participation by the other carriers had dropped to where American was carrying 18.5 percent, Northeast 7.9 percent, and Eastern 56.5 percent.[41]

It can be seen that the present competition in this market is losing effectiveness against Eastern's shuttle service. Therefore, Allegheny's proposed service would have little or no hope of success.

The Bureau has estimated that this proposed service by Allegheny would result in a loss of $92,000 with an 8 percent share of the market and Allegheny would expect its share to be 11.7 percent of the market, resulting in a profit of $250,000 for 1963.

It is difficult to see how Allegheny can capture 8 or 11 percent of the market while Northeast's participation in 1962 dropped to 7.9 percent and Northeast estimates that it would carry only 3.3 percent of the market in 1963. It is also noted that American's participation continues to show a substantial decrease. Therefore, Allegheny's loss from its proposed service could well be far in excess of $92,000 as estimated by the Bureau. Such a loss could adversely affect the financial position of the carrier resulting in an increased subsidy cost. The extent of such loss need not be determined as there is no showing of a public need for the proposed service.

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[41] See Appendix IX.

In view of the foregoing and all the facts of record, it is concluded that Allegheny's request for nonstop service between New York and Washington be denied.

New York-Baltimore: As indicated this market is served by five trunk carriers and is a highly competitive market although lacking in volume of traffic as compared to the New York-Washington market. It is estimated that in 1962 this market will generate 130,000 passengers.

Eastern continues to be the leading carrier from the standpoint of participation. In 1961 Eastern carried 59.2 percent of the total traffic and in 1962 34.4 percent.

While Baltimore has been designated to receive air service in this market by the above number of carriers for several years, it has not through the years received adequate service commensurate with the size and importance of the market as was found by the Board in the *Washington-Baltimore Adequacy of Service Case, supra.* As a result of the above decision the Board ordered four of the above carriers[42] to meet with the Board's staff with a view to improving service at Baltimore. Prior to any definite action by the Board, the carriers voluntarily improved their schedules thus avoiding definite action on the part of the Board. The City of Baltimore did not offer any evidence at the hearing indicating a need for additional air service beyond that now provided by the above number of carriers. However, in the city's statement of position it did express some concern over a possible loss of jet service in the future as the various carriers now serving the Washington-Baltimore area through Friendship Airport began serving the Washington area from Dulles Airport. In the event the city does not in the future receive adequate air service it may, as it has in the past, request the Board to take proper action to compel adequate service by the carriers under appropriate provisions of the Act.

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[42] American, Eastern, National and Northeast.

Allegheny contends that the schedules now provided by the trunk carriers at Baltimore are not properly spaced throughout the day to accommodate the commuter traffic. A review of the record indicates that the present flights are evenly distributed throughout the day and early evening hours. Allegheny proposes four daily round trips in this market. One of these trips would originate and terminate at Washington where it would compete with Eastern's shuttle service to New York. It is extremely doubtful whether any one would take a one stop service by Allegheny from Washington to New York via Baltimore with all the frequent nonstop service available including the shuttle service by Eastern direct from Washington to New York.

Allegheny has estimated an operating profit of $137,000 for 1963 from its proposed service. The Bureau estimates a loss of $173,000 with Allegheny carrying 25 percent of the market with a load factor of 33.7 percent. It is difficult to see how Allegheny will carry as much as 25 percent of the market when it proposes only 17 percent of the nonstop seats. Allegheny has estimated that it will carry 46 percent of the total local market in 1963.[42]

As indicated there is a considerable difference in the financial results of the proposed service between the Bureau and Allegheny and much of this difference is no doubt due to the different methods used in estimating the indirect costs. Which of the two estimates is more accurate cannot be definitely determined and they must remain as only estimates. It does appear, however, that Allegheny has been more than generous in its estimation of participation in this market in view of the heavy trunk service now available. The fact remains that the record is void of any substantial evidence indicating a public need for the proposed service.

In view of the foregoing and all of the facts of record, it is concluded that Allegheny's request for nonstop service between New York and Baltimore be denied.

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[42] Allegheny estimates the local market would be 133,000 in 1963.

APPENDIX I
Page 1 of 2

Table 5

HISTORICAL GROWTH OF ON-LINE O & D PASSENGER TRAFFIC FOR SELECTED FLORIDA AND COMMUTER MARKETS ON NORTHEAST'S ROUTE 27 1957 THROUGH 1962 1/

Selected market	Number of on-line O & D passengers						Passenger traffic increase over previous year					Average annual rate of growth 2/
	1957	1958	1959	1960	1961	1962	1958	1959	1960	1961	1962	
Florida:												
Boston-Tampa/St. Petersburg	20,777	26,844	31,310	28,317	24,930	27,105	29.2%	16.6%	(9.6%)	(12.0%)	8.7%	6.6%
Boston-Jacksonville	6,784	9,054	12,785	13,155	12,270	11,371	33.5	41.2	2.9	(6.7)	(7.3)	12.7
Boston-Miami/Ft. Lauderdale	99,801	98,276	128,357	118,069	121,611	127,446	(1.5)	30.6	(8.0)	3.0	4.8	5.8
New York/Newark-Tampa/St. Petersburg	109,884	115,499	139,962	126,483	140,748	136,123	5.1	21.2	(9.5)	11.1	(3.3)	4.9
New York/Newark-Jacksonville	88,946	69,026	78,726	74,191	80,907	83,395	(22.4)	14.1	(5.8)	9.1	3.1	(0.4)
New York/Newark-Miami/Ft. Lauderdale	966,415	867,987	1,061,824	973,024	955,620	981,400	(10.2)	22.3	(8.4)	(1.8)	2.7	0.9
Philadelphia-Tampa/St. Petersburg	7,963	17,194	20,105	18,440	16,895	20,451	115.9	16.9	(8.3)	(8.4)	21.0	27.4
Philadelphia-Jacksonville	5,539	8,201	11,559	12,461	13,688	13,718	48.1	40.9	7.8	9.8	0.2	21.4
Philadelphia-Miami/Ft. Lauderdale	110,870	108,144	136,857	118,236	132,818	134,044	(2.5)	26.6	(13.6)	11.5	1.7	4.7
Baltimore/Washington-Tampa/St. Petersburg	36,026	36,367	39,310	35,370	36,451	35,465	(0.7)	8.1	(10.0)	3.1	(2.7)	(0.4)
Baltimore/Washington-Jacksonville	40,274	26,912	30,643	28,513	32,066	29,836	(33.2)	13.9	(7.0)	12.5	(7.0)	(4.2)
Baltimore/Washington-Miami/Ft. Lauderdale	177,984	154,427	158,468	146,958	157,863	162,325	(13.2)	2.6	(7.3)	7.4	2.8	(1.5)
Total Florida	1,671,863	1,537,911	1,849,906	1,693,217	1,724,867	1,762,679	(8.0%)	20.3%	(8.5%)	1.9%	2.2%	1.6%
Commuter:												
Boston-Philadelphia	103,507	126,359	143,252	152,186	166,610	186,872	22.6%	13.4%	6.2%	9.5%	12.2%	12.8%
Boston-New York/Newark	936,067	963,249	1,093,425	1,116,012	1,159,069	1,351,561	2.9	13.5	2.1	3.9	16.6	7.8
Boston-Washington	152,619	174,237	201,056	211,242	225,661	270,989	14.2	15.4	5.1	6.8	20.1	12.3
Boston-Baltimore	15,010	19,490	29,561	35,541	40,861	40,805	29.8	51.7	20.2	15.0	(0.1)	23.3
New York/Newark-Washington	828,575	825,890	903,950	891,711	995,503	1,200,730	(0.3)	9.5	(1.4)	11.6	20.6	8.0
New York/Newark-Baltimore	81,061	82,478	86,877	86,191	109,361	130,103	(0.7)	5.3	(2.8)	26.9	19.0	9.9
Total Commuter	2,118,839	2,191,703	2,458,121	2,492,883	2,697,063	3,181,060	3.5%	12.2%	1.4%	8.2%	17.9%	8.6%
Over-all total	3,790,702	3,729,614	4,308,027	4,186,100	4,421,912	4,943,739	(1.6%)	15.5%	(2.8%)	5.6%	11.8%	5.7%

1/ Data for 1956 not available.

2/ Arithmetic mean.

Source: Tables 3 and 4.

APPENDIX 7
Page 2 of 2

Table 15

HISTORICAL RATE OF GROWTH OF IN-LINE 5 & 3 PASSENGER TRAFFIC
FOR SELECTED FLORIDA AND COMMUTER MARKETS IN
NORTHEAST'S ROUTE 27
AS USED TO DEVELOP 1963 FORECAST

Year	Revenue Passengers: Florida Total	Revenue Passengers: Commuter Total	Revenue Passengers: Combined Total	Percentage Growth Over Previous Year: Florida Total	Percentage Growth Over Previous Year: Commuter Total	Percentage Growth Over Previous Year: Combined Total
1957	1,671,863	2,118,839	3,790,702	-	-	-
1958	1,537,811	2,191,703	3,729,514	(8.02)	3.44	(1.61)
1959	1,849,906	2,458,121	4,308,027	20.29	12.16	15.51
1960	1,693,217	2,492,883	4,186,100	(8.47)	1.41	(2.83)
1961	1,724,867	2,697,045	4,421,912	1.87	8.19	5.63
1962	1,762,679	3,181,066	4,943,745	2.19	17.95	11.80
1963 forecast	1,790,529 1/	3,455,585 1/	5,246,114 1/	1.58	8.63	6.12

1/ Based on average (geom) annual percentage growth.

Source: Tables 3 and 4.

APPENDIX 11

Table 9

NUMBER OF SCHEDULED NONSTOP FLIGHTS IN SELECTED FLORIDA MARKETS
FOR MONTHS OF MARCH AND SEPTEMBER 1/
1958 THROUGH 1962

Market	1958 March	1958 Sept.	1959 March	1959 Sept.	1960 March	1960 Sept. 2/	1961 March	1961 Sept.	1962 March	1962 Sept. 3/	1962 Dec.
Boston-Tampa/St. Petersburg	-	-	-	-	-	-	-	-	14	-	14
Eastern	-	-	-	-	-	-	-	-	-	-	-
National	-	-	-	-	-	-	-	-	-	-	-
Northeast	-	-	-	-	-	-	-	-	14	-	14
Boston-Jacksonville	-	-	-	-	-	-	-	-	-	-	-
Eastern	-	-	-	-	-	-	-	-	-	-	-
National	-	-	-	-	-	-	-	-	-	-	-
Northeast	-	-	-	-	-	-	-	-	-	-	-
Boston-Miami/Ft. Lauderdale	186	-	310	90	310	110	186	186	248	60	[illegible]
Eastern	124	-	186	90	186	90	62	46	128	-	[illegible]
National	[illegible]	-	-	-	-	-	-	-	-	-	[illegible]
Northeast	62	-	124	60	124	60	124	60	120	60	[illegible]
New York/Newark-Tampa/St. Petersburg	319	210	310	180	186	170	319	180	216	60	[illegible]
Eastern	62	90	124	120	62	90	170	60	60	-	[illegible]
National	120	60	120	120	186	60	62	60	90	60	[illegible]
Northeast	124	60	62	-	-	60	124	60	60	-	[illegible]
New York/Newark-Jacksonville	[illegible]	[illegible]	372	[illegible]	[illegible]	[illegible]	372	[illegible]	[illegible]	[illegible]	[illegible]
Eastern	123	150	186	160	145	170	186	144	120	90	[illegible]
National	186	120	186	120	120	120	93	126	126	90	[illegible]
Northeast	-	-	-	60	120	60	-	60	60	60	[illegible]
New York/Newark-Miami/Ft. Lauderdale	[illegible]	1,336	1,809	1,422	1,806	1,466	1,346	1,119	1,808	1,118	[illegible]
Eastern	[illegible]	720	877	960	773	676	779	701	1,018	773	[illegible]
National	781	476	715	908	697	772	777	228	408	414	[illegible]
Northeast	317	176	282	208	316	60	876	190	372	190	[illegible]
Philadelphia-Tampa/St. Petersburg	-	-	-	-	-	-	-	-	-	-	-
Eastern	-	-	-	-	-	-	-	-	-	-	-
National	-	-	-	-	-	-	-	-	-	-	-
Northeast	-	-	-	-	-	-	-	-	-	-	-
Philadelphia-Jacksonville	-	-	30	-	-	60	30	-	-	-	-
Eastern	-	-	-	-	-	-	30	-	-	-	-
National	-	-	-	-	-	60	-	-	-	-	-
Northeast	-	-	30	-	-	-	-	-	-	-	-
Philadelphia-Miami/Ft. Lauderdale	273	270	310	208	208	168	310	200	310	180	[illegible]
Eastern	71	90	120	120	120	108	186	120	186	60	[illegible]
National	62	60	62	-	62	-	62	-	62	60	[illegible]
Northeast	120	120	120	88	62	60	62	80	62	60	[illegible]
Baltimore/Washington-Tampa/St. Petersburg	120	120	186	90	120	60	186	120	-	30	[illegible]
Eastern	62	60	62	90	120	60	120	120	-	30	[illegible]
National	-	-	62	-	-	-	62	-	-	-	-
Northeast	62	60	62	-	-	-	-	-	-	-	-
Baltimore/Washington-Jacksonville	341	266	407	330	341	296	310	300	380	216	[illegible]
Eastern	155	146	155	146	155	116	120	170	170	30	[illegible]
National	186	120	186	120	120	120	120	120	120	120	[illegible]
Northeast	-	-	30	60	60	60	62	60	62	60	[illegible]
Baltimore/Washington-Miami/Ft. Lauderdale	671	556	672	523	508	366	399	261	[illegible]	200	[illegible]
Eastern	269	260	335	253	302	186	153	60	155	50	[illegible]
National	310	180	217	196	186	120	120	122	120	120	[illegible]
Northeast	92	116	120	60	62	60	120	60	120	-	-
Total-Florida markets	4,309	3,098	4,500	3,561	3,977	2,696	3,557	2,662	3,605	2,120	[illegible]
Eastern	1,866	1,586	2,036	1,809	1,938	1,388	1,727	1,227	2,085	[illegible]	[illegible]
National	1,669	960	1,572	1,084	1,295	902	980	727	775	766	[illegible]
Northeast	775	552	902	568	746	406	846	708	886	397	[illegible]

1/ Also includes December for 1962.

2/ Source material failed to include effective dates of carriers' schedules for the September flights. The figures for this month were compiled from the September 15, 1960 issue of the Quick Reference Edition of the Official Airline Guide, and unless otherwise indicated in the flight listings, it was assumed that the carriers' flights were in effect as of September 1, 1960 and remained unchanged throughout the month.

3/ Limited nonstop traffic for Eastern for this month due to curtailed operations caused by strike.

Source: Official Airline Guide, Quick Reference Editions.

APPENDIX III

Table 16

HISTORICAL RATE OF GROWTH OF ON-LINE CAB PASSENGER-MILE TRAFFIC
FOR SELECTED FLORIDA AND COMMUTER MARKETS ON NORTHEAST'S ROUTE 27
AS USED TO DEVELOP 1963 FORECAST

Year	Revenue Passenger-Miles (000)			Percentage Growth over Previous Year		
	Florida Total	Commuter Total	Combined Total	Florida Total	Commuter Total	Combined Total
1957	1,746,428	461,058	2,207,486	-	-	-
1958	1,612,196	482,029	2,094,225	(7.69)	4.55	(5.13)
1959	1,946,955	542,707	2,489,662	20.76	12.59	18.88
1960	1,781,116	552,870	2,333,986	(8.52)	1.87	(6.25)
1961	1,808,369	599,131	2,407,500	1.53	8.37	3.15
1962	1,850,452	706,232	2,556,684	2.33	17.88	6.20
1963 Forecast	1,881,540 1/	770,146 1/	2,651,686 1/	1.68	9.05	3.72

1/ Based on average (mean) annual percentage growth.

APPENDIX IV
Page 1 of 2

Table 3

ON-LINE O&D PASSENGER TRAFFIC FOR EASTERN, NATIONAL AND NORTHEAST FOR SELECTED FLORIDA MARKETS ON NORTHEAST'S ROUTE 27 1956 THROUGH 1962

Florida market	Carrier	No. of on-line O&D passengers							Distribution of market						
		1956	1957	1958	1959	1960	1961	1962	1956	1957	1958	1959	1960	1961	1962
Boston-Tampa/St. Petersburg	Eastern	17,928	13,054	12,218	16,208	13,497	15,466	19,312	100.0%	62.8%	45.5%	51.8%	47.7%	62.0%	70.9%
	National	-	5,060	2,268	6,758	1,806	1,884	4,567	-	24.4	8.4	21.6	6.4	7.6	16.8
	Northeast	-	2,663	12,358	8,344	13,014	7,580	3,346	-	12.8	46.1	26.6	45.9	30.4	12.3
	Total	17,928	20,777	26,844	31,310	28,317	24,930	27,225	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Boston-Jacksonville	Eastern	5,292	5,084	6,879	6,496	6,297	5,974	3,292	100.0%	74.9%	76.0%	50.8%	47.9%	48.7%	28.9%
	National	-	1,700	2,175	4,173	2,235	2,840	5,274	-	25.1	24.0	32.6	17.0	23.1	46.4
	Northeast	-	-	-	2,116	4,623	3,456	2,805	-	0.0	0.0	16.6	35.1	28.2	24.7
	Total	5,292	6,784	9,054	12,785	13,155	12,270	11,371	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Boston-Miami/Ft. Lauderdale	Eastern	103,572	82,688	58,907	72,514	70,704	44,637	43,109	100.0%	82.9%	60.0%	56.5%	59.9%	36.7%	33.8%
	National	-	6,434	6,985	4,929	3,280	628	6,486	-	6.4	7.1	3.8	2.8	0.5	5.1
	Northeast	-	10,699	32,384	50,894	44,085	76,356	77,871	-	10.7	32.9	39.7	37.3	62.8	61.1
	Total	103,572	99,821	98,276	128,337	118,069	121,621	127,466	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
New York/Newark-Tampa/ St. Petersburg	Eastern	41,724	65,990	43,727	66,944	62,711	66,000	57,944	41.2%	60.1%	37.9%	47.8%	49.6%	46.9%	42.6%
	National	59,556	37,074	51,616	64,138	52,565	45,296	49,508	58.8	33.7	44.7	45.8	41.5	32.2	36.4
	Northeast	-	6,820	20,156	8,880	11,207	29,452	28,671	-	6.2	17.4	6.4	8.9	20.9	21.0
	Total	101,280	109,884	115,499	139,962	126,483	140,748	136,123	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
New York/Newark-Jacksonville	Eastern	30,336	65,113	37,995	43,671	37,247	37,600	32,448	55.7%	73.2%	55.0%	55.5%	50.2%	46.5%	37.7%
	National	24,096	23,833	31,031	32,269	31,113	28,657	32,468	44.3	26.8	45.0	41.0	41.9	35.4	37.7
	Northeast	-	-	-	2,786	5,832	14,650	20,479	-	0.0	0.0	3.5	7.9	18.1	24.6
	Total	54,432	88,946	69,026	78,726	74,192	80,907	85,395	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
New York/Newark-Miami/ Ft. Lauderdale	Eastern	504,612	593,551	427,750	553,170	492,494	468,856	447,628	54.9%	61.5%	49.3%	52.1%	50.9%	49.1%	45.6%
	National	415,296	313,796	348,806	394,862	362,464	298,656	352,068	45.1	32.5	40.2	37.2	37.5	31.2	35.8
	Northeast	-	57,068	91,411	113,792	112,062	188,128	182,737	-	5.9	10.5	10.7	11.6	19.7	18.6
	Total	919,908	964,415	867,967	1,061,824	967,020	955,640	982,433	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Philadelphia-Tampa/St. Petersburg	Eastern	3,420	32	3,730	9,270	4,580	3,742	5,240	29.8%	0.4%	21.7%	41.9%	24.8%	22.1%	25.5%
	National	8,040	6,224	3,876	3,666	4,292	5,075	8,294	70.2	78.3	22.5	16.6	23.3	30.0	40.3
	Northeast	-	1,697	9,588	9,169	9,569	8,089	7,022	-	21.3	55.8	41.5	51.9	47.9	34.2
	Total	11,460	7,953	17,194	22,105	18,441	16,906	20,556	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

APPENDIX 17
Page 2 of 2

Table 3

ON-LINE O&D PASSENGER TRAFFIC FOR EASTERN, NATIONAL AND NORTHEAST
FOR SELECTED FLORIDA MARKETS ON NORTHEAST'S ROUTE 27
1956 THROUGH 1962

		No. of on-line O&D passengers							Distribution of market						
Florida market (cont'd)	Carrier	1956	1957	1958	1959	1960	1961	1962	1956	1957	1958	1959	1960	1961	1962
Philadelphia-Jacksonville	Eastern	2,880	712	1,786	2,192	1,929	3,101	1,907	45.0%	12.9%	21.8%	19.0%	15.5%	22.7%	13.9%
	National	3,516	4,827	6,415	7,370	6,540	6,219	8,906	55.0	87.1	78.2	63.8	52.5	45.4	64.9
	Northeast	-	-	-	1,997	3,992	4,368	2,903	-	0.0	0.0	17.2	32.0	31.9	21.2
	Total	6,396	5,539	8,201	11,559	12,461	13,688	13,718	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Philadelphia-Miami/Ft. Lauderdale	Eastern	59,232	76,823	50,109	74,406	72,393	86,138	69,706	54.5%	69.3%	46.3%	54.4%	61.2%	65.3%	52.0%
	National	49,548	25,195	23,258	27,208	22,769	13,932	22,981	45.5	22.7	21.5	19.9	19.3	10.6	17.1
	Northeast	-	8,852	34,777	35,243	23,074	31,748	41,357	-	8.0	32.2	25.7	19.5	24.1	30.9
	Total	108,780	110,870	108,144	136,857	118,236	131,818	134,044	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Baltimore/Washington-Tampa/St. Petersburg	Eastern	13,128	17,684	22,156	26,225	21,966	21,544	14,157	47.0%	48.3%	60.9%	66.7%	62.1%	59.1%	39.9%
	National	14,820	16,937	6,566	7,187	8,645	10,334	16,343	53.0	46.2	18.1	18.3	24.4	28.4	46.1
	Northeast	-	2,005	7,645	5,898	4,759	4,573	4,965	-	5.5	21.0	15.0	13.5	12.5	14.0
	Total	27,948	36,626	36,367	39,310	35,370	36,451	35,465	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Baltimore/Washington-Jacksonville	Eastern	9,696	26,413	12,526	14,809	10,854	11,414	8,680	46.8	65.6%	46.5%	48.3%	38.1%	35.6%	29.1%
	National	11,040	13,861	14,386	12,519	13,987	16,367	18,506	53.2	34.4	53.5	40.9	49.0	51.0	62.0
	Northeast	-	-	-	3,315	3,672	4,285	2,650	-	0.0	0.0	10.8	12.9	13.4	8.9
	Total	20,736	40,274	26,912	30,643	28,513	32,066	29,836	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Baltimore/Washington-Miami/Ft. Lauderdale	Eastern	65,856	93,569	69,662	81,605	77,480	62,314	52,464	45.4%	52.6%	45.1%	51.5%	52.7%	39.5%	32.3%
	National	79,224	81,666	73,451	60,407	53,787	62,697	87,637	54.6	45.9	47.6	38.1	36.6	39.7	54.0
	Northeast	-	2,749	11,314	16,456	15,691	32,852	22,224	-	1.5	7.3	10.4	10.7	20.8	13.7
	Total	145,080	177,984	154,427	158,468	146,958	157,863	162,325	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Total, Florida markets	Eastern	857,676	1,039,733	747,445	966,510	871,156	826,766	748,876	56.3%	62.2%	48.6%	52.3%	51.4%	47.9%	42.5%
	National	665,136	538,607	570,833	627,476	563,484	492,573	611,197	43.7	32.2	37.1	33.9	33.3	28.6	34.7
	Northeast	-	93,523	219,633	255,920	258,577	405,528	402,606	-	5.6	14.3	13.8	15.3	23.5	22.8
	Total	1,522,812	1,671,863	1,537,911	1,849,906	1,693,217	1,724,867	1,762,679	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

APPENDIX VII
Page 1 of 2

Table 11: Revenue Block Hour Approach

NORTHEAST AIRLINES, INC.
FORECAST OF PROFIT AND LOSS YEAR 1963
FULL SYSTEM RENEWED

Item	DC-3	V-745	DC-6B	CV-880	System
Revenue miles (000) 1/	1,202	4,924	3,360	9,571	19,057
Available seat-miles (000) 1/	28,848	216,656	250,292	928,387	1,424,183
Revenue passenger-miles (000)	-	-	-	-	762,924 2/
Block-to-block hours 1/ 3/	10,017	26,755	18,798	22,842	78,412
Yield per revenue passenger-mile	-	-	-	-	6.54¢ 4/
Revenues (000)					
Passenger revenue	-	-	-	-	$49,895 5/
Other revenue	-	-	-	-	3,089 6/
Total	-	-	-	-	$52,984
Operating expenses (000)					
Direct, excluding depreciation and rentals 7/	$1,152	$5,232	$4,792	$16,642	$27,818
Rentals and depreciation flight equipment	25 7/	1,491 7/	1,040 7/	4,470 8/	7,026
Total direct operating expense	$1,177	$6,723	$5,832	$21,112	$34,844
Indirect operating expense	-	-	-	-	23,011 9/
Total operating expenses	-	-	-	-	$57,855
Operating profit (loss)	-	-	-	-	($4,871)

1/ NEA Exhibit 1003.

2/ 735,561,000 x 103.72% (Northeast's actual revenue passenger-miles, year ending December 31, 1962, increased by average annual traffic percentage growth rate shown in Table 10, App. III)

3/ Assumption that these hours, as forecast by Northeast, represent revenue block-to-block hours, exclusive of any nonrevenue operations.

4/ Based on data for 12 months ending December 31, 1962, as follows:

$$\frac{\text{Passenger revenue}}{\text{Revenue passenger-miles}} = \frac{\$48,082,078}{735,561}$$

5/ 762,924 x 6.54¢

6/ Based on data for 12 months ending December 31, 1962, as follows:

$$\frac{\text{Other revenue}}{\text{Passenger revenue}} = \frac{\$2,977,437}{\$48,082,078} = 6.19\,\%$$

7/ Based on data for 12 months ending September 30, 1962 as follows:

$$\frac{\text{Direct, excluding depreciation and rentals}}{\text{Revenue block-to-block hours}} \times \text{Forecast block-to-block hours:}$$

$$\frac{\$1,699,065}{14,778} \times 10,017 \quad \underline{\text{DC-3}}$$

$$\frac{\$4,784,746}{24,467} \times 26,755 \quad \underline{\text{V-745}}$$

$$\frac{\$8,038,648}{31,535} \times 18,798 \quad \underline{\text{DC-6B}}$$

$$\frac{\$13,448,811}{18,459} \times 22,842 \quad \underline{\text{CV-880}}$$

APPENDIX VII
Page 2 of 2

Table II: Revenue Block Hour Approach

NORTHEAST AIRLINES, INC.
FORECAST OF PROFIT AND LOSS YEAR 1963
FULL SYSTEM RENEWED

7/ (Continued)

$$\frac{\text{Rentals and depreciation, flight equipment}}{\text{Revenue block-to-block hours}} \text{ x Forecast block-to-block hours:}$$

$$\frac{\$37,550}{14,778} \text{ x } 10,017 \quad \underline{\text{DC-3}}$$

$$\frac{\$1,363,756}{24,467} \text{ x } 26,755 \quad \underline{\text{V-745}}$$

$$\frac{\$1,744,254}{31,535} \text{ x } 18,798 \quad \underline{\text{DC-6B}}$$

8/ Based on renegotiated rate per NEA Exhibit 1003.

9/ Based on data for 12 months ending September 30, 1962 as follows:

$$\frac{\text{Indirect operating expense}}{\text{Direct, excluding depreciation and rentals}} = \frac{\$23,138,334}{\$27,971,270} = 82.72\%$$

Sources: CAB Form 41, NEA Exhibit 1003, Exhibit BER-R-307-B Revised.

APPENDIX VIII
Page 1 of 2

Table 12: Total Block Hour Approach

NORTHEAST AIRLINES, INC.
FORECAST OF PROFIT AND LOSS YEAR 1963
FULL SYSTEM RENEWED

Item	DC-3	V-745	DC-6B	CV-880	System
Revenue miles (000) 1/	1,202	4,924	3,360	9,571	19,057
Available seat-miles (000) 1/	28,848	216,656	250,292	928,387	1,424,183
Revenue passenger-miles (000)	-	-	-	-	762,924 2/
Block-to-block hours 1/ 3/	10,017	26,755	18,798	22,842	78,412
Yield per revenue passenger-mile	-	-	-	-	6.54¢ 4/
Revenues (000)					
Passenger revenue	-	-	-	-	$49,895 5/
Other revenue	-	-	-	-	3,089 6/
Total	-	-	-	-	$52,984
Operating expenses (000)					
Direct, excluding depreciation and rentals 7/	$1,124	$5,143	$4,687	$16,286	$27,240
Rentals and depreciation, flight equipment	25 7/	1,466 7/	1,017 7/	4,470 8/	6,978
Total direct operating expense	$1,149	$6,609	$5,704	$20,756	$34,218
Indirect operating expense	-	-	-	-	22,533 9/
Total operating expense	-	-	-	-	$56,751
Operating profit (loss)	-	-	-	-	($3,767)

1/ NEA Exhibit 1003.

2/ 735,561,000 x 103.72% (Northeast's actual revenue passenger-miles, year ending December 31, 1962, increased by average annual traffic percentage growth rate shown in Table 10).

3/ Assumption that these hours, as forecast by Northeast represent total block-to-block hours, including revenue block-to-block hours plus nonrevenue block-to-block hours (ferry, personnel training, developmental, and other) but excluding aircraft block-to-block hours in capitalized projects.

4/ Based on data for 12 months ending December 31, 1962, as follows:

$$\frac{\text{Passenger revenue}}{\text{Revenue passenger-miles}} = \frac{\$48{,}082{,}078}{735{,}561}$$

5/ 762,924 x 6.54¢

6/ Based on data for 12 months ending December 31, 1962, as follows:

$$\frac{\text{Other revenue}}{\text{Passenger revenue}} = \frac{\$2{,}977{,}437}{\$48{,}082{,}078} = 6.19\%$$

7/ Based on data for 12 months ending September 30, 1962, as follows:

$$\frac{\text{Direct, excluding depreciation and rentals}}{\text{Total block-to-block hours}} \times \text{Forecast block-to-block hours:}$$

$$\frac{\$1{,}699{,}065}{15{,}137} \times 10{,}017 \quad \underline{\text{DC-3}}$$

$$\frac{\$4{,}784{,}746}{24{,}892} \times 26{,}755 \quad \underline{\text{V-745}}$$

$$\frac{\$8{,}038{,}648}{32{,}242} \times 18{,}798 \quad \underline{\text{DC-6B}}$$

$$\frac{\$13{,}448{,}811}{18{,}863} \times 22{,}842 \quad \underline{\text{CV-880}}$$

APPENDIX VIII
Page 2 of 2

Table 12: Total Block Hour Approach

NORTHEAST AIRLINES, INC.
FORECAST OF PROFIT AND LOSS YEAR 1963
FULL SYSTEM RENEWED

2/ (Continued)

$$\frac{\text{Rentals and depreciation, flight equipment}}{\text{Total block-to-block hours}} = \text{Forecast block-to-block hours}$$

$$\frac{\$37,550}{15,137} \times 10,017 \qquad \text{DC-3}$$

$$\frac{\$1,363,756}{24,892} \times 26,755 \qquad \text{V-745}$$

$$\frac{\$1,744,254}{32,242} \times 18,798. \qquad \underline{\text{DC-6B}}$$

8/ Based on renegotiated rate per NEA Exhibit 1003.

9/ Based on data for 12 months ending September 30, 1962, as follows:

$$\frac{\text{Indirect operating expenses}}{\text{Direct, excluding depreciation and rentals}} = \frac{\$23,138,334}{\$27,971,270} = 82.72\%$$

Source: CAB Form 41, NEA Exhibit 1003, Exhibit NEA-R-307-B Revised.

APPENDIX IX
Page 1 of 2

Table 4
ON-LINE O&D PASSENGER TRAFFIC FOR SELECTED
COMMUTER MARKETS ON NORTHEAST'S ROUTE 27
1957 THROUGH 1962

Commuter market	Carrier	No. of on-line O&D passengers 1957	1958	1959	1960	1961	1962	Distribution of market 1957	1958	1959	1960	1961	1962
Boston-Philadelphia	Allegheny	-	-	-	8,771	17,112	25,079	0.0%	0.0%	0.0%	5.8%	10.3%	13.4%
	American	67,301	51,714	21,720	21,340	553	2,972	65.0	41.0	15.2	14.0	0.3	1.6
	Eastern	23,277	21,540	37,133	34,373	59,195	46,046	22.5	17.0	25.9	22.6	35.6	24.6
	National	2,880	687	1,886	1,938	1,058	3,684	2.8	0.5	1.3	1.3	0.6	2.0
	Northeast	10,049	52,418	82,513	85,764	88,692	109,091	9.7	41.5	57.6	56.3	53.2	58.4
	Total	103,507	126,359	143,252	152,186	166,610	186,872	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Boston-New York/Newark	Allegheny	-	-	-	3,426	10,917	20,225	0.0%	0.0%	0.0%	0.3%	1.0%	1.5%
	American	563,771	556,426	460,610	394,940	299,028	198,420	60.2	57.8	42.1	35.4	25.8	14.7
	Eastern	276,158	226,674	340,848	358,946	506,961	803,535	29.5	23.5	31.2	32.2	43.7	59.5
	Mohawk	-	-	-	9,136	6,909	NA	0.0	0.0	0.0	0.8	0.6	NA
	National	2,169	9,755	41,591	25,061	44,184	54,705	0.2	1.0	3.8	2.2	3.8	4.0
	Northeast	64,222	91,885	164,954	268,270	263,753	251,961	6.9	9.5	15.1	24.0	22.8	18.6
	Trans World	10,007	29,023	50,166	36,301	16,457	22,715	1.1	3.0	4.6	3.3	1.4	1.7
	United/Capital	19,740	49,486	35,356	19,932	10,860	-	2.1	5.2	3.2	1.8	0.9	-
	Total	936,067	963,249	1,093,425	1,116,012	1,159,069	1,351,561	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Boston-Washington	Allegheny	-	-	-	756	437	472	0.0%	0.0%	0.0%	0.4%	0.2%	0.2%
	American	97,227	81,003	30,020	47,160	25,032	33,621	63.7	46.5	14.9	22.3	11.1	12.4
	Eastern	31,599	40,837	48,815	24,967	28,166	44,258	20.7	23.4	24.3	11.8	12.5	16.3
	National	11,184	11,706	14,842	9,527	1,455	1,278	7.3	6.7	7.4	4.5	0.6	0.5
	Trans World	-	-	-	-	-	741	-	-	-	-	-	0.3
	Northeast	12,609	60,691	107,379	128,832	170,571	190,619	8.3	23.4	53.4	61.0	75.6	70.3
	Total	152,619	174,237	201,056	211,242	225,661	270,989	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Boston-Baltimore	Allegheny	-	-	-	3,304	2,239	1,347	0.0%	0.0%	0.0%	9.3%	5.5%	3.3%
	Eastern	11,290	9,813	11,615	9,463	14,990	6,554	75.2	50.3	39.3	26.6	36.7	16.1
	National	3,720	9,677	17,946	14,226	7,277	5,631	24.8	49.7	60.7	40.0	17.8	13.8
	Northeast	-	-	-	-	69	4,424	0.0	0.0	0.0	0.0	0.2	10.8
	Trans World	-	-	-	8,548	16,286	22,849	0.0	0.0	0.0	24.1	39.8	56.0
	Total	15,010	19,490	29,561	35,541	40,861	40,805	100.0	100.0	100.0	100.0	100.0	100.0
New York/Newark-Washington	Allegheny	190	468	296	283	612	445	0.0%	0.1%	0.0%	0.0%	0.1%	0.0%
	American	436,553	428,090	336,560	276,280	250,840	222,016	52.7	51.8	37.2	31.0	25.2	18.5
	Braniff	13,906	23,818	17,280	19,086	22,435	35,709	1.7	2.9	1.9	2.1	2.3	3.0
	Delta	14,482	6,760	9,630	1,530	3,330	4,925	1.7	0.8	1.1	0.2	0.3	0.4
	Eastern	291,783	256,906	327,992	314,674	429,752	678,529	35.2	31.1	36.3	35.3	43.2	56.5
	National	16,385	18,657	35,340	40,937	61,686	103,309	2.0	2.3	3.9	4.6	6.2	8.6
	Northeast	1,624	25,820	99,083	163,971	185,076	94,472	0.2	3.1	11.0	18.4	18.6	7.9
	Trans World	7,519	7,981	12,955	18,098	6,068	14,702	0.9	1.0	1.4	2.0	0.6	1.2
	United/Capital	46,133	57,390	64,814	56,852	35,704	46,623	5.6	6.9	7.2	6.4	3.5	3.9
	Total	828,575	825,890	903,950	891,711	995,503	1,200,730	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

APPENDIX II
Page [illegible]

Table 4
ON-LINE O&D PASSENGER TRAFFIC FOR SELECTED
COMMUTER MARKETS ON NORTHEAST'S ROUTE 27
1957 THROUGH 1962

Commuter market	Carrier	No. of on-line O&D passengers						Distribution of market					
		1957	1958	1959	1960	1961	1962	1957	1958	1959	1960	1961	1962
New York/Newark-Baltimore													
	Allegheny	-	-	342	11	-	-	0.0%	0.0%	0.4%	0.0%	0.0%	0.0%
	American	33,306	31,590	27,360	22,050	12,060	8,976	40.1	38.3	31.5	25.6	11.0	6.9
	Eastern	45,669	45,411	50,326	53,604	64,724	44,775	55.0	55.1	57.9	62.2	59.2	34.4
	National	3,140	5,477	8,849	10,160	19,457	34,142	3.8	6.6	10.2	11.8	17.8	26.2
	Northeast	-	-	-	-	178	53	-	-	-	-	0.2	0.0
	Trans World	-	-	-	-	1,159	14,327	0.0	0.0	0.0	-	1.1	11.0
	United/Capital	946	-	-	366	11,763	27,830	1.1	0.0	0.0	0.4	10.8	21.4
	Total	83,061	82,478	86,877	86,191	109,341	130,103	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Total, commuter markets													
	Allegheny	190	468	638	16,551	31,317	47,568	0.0%	0.0%	0.0%	0.7%	1.2%	1.5%
	American	1,198,158	1,148,823	876,170	761,770	587,513	466,005	56.5	52.4	35.6	30.6	21.8	14.6
	Braniff	13,906	23,818	17,280	19,086	22,435	35,709	0.7	1.1	0.7	0.8	0.8	1.1
	Delta	14,482	6,760	9,630	1,530	3,330	4,925	0.7	0.3	0.4	0.0	0.1	0.2
	Eastern	679,776	601,181	816,729	796,027	1,103,788	1,623,697	32.1	27.4	33.2	31.9	40.9	51.0
	Mohawk	-	-	-	9,136	6,909	NA	-	-	-	0.4	0.3	NA
	National	39,478	55,959	120,454	101,849	135,117	202,749	1.9	2.6	4.9	4.1	5.0	6.4
	Northeast	88,504	210,814	453,929	646,837	708,339	650,620	4.2	9.6	18.5	25.9	26.3	20.5
	Trans World	17,526	37,004	63,121	62,947	39,970	75,334	0.8	1.7	2.6	2.5	1.5	2.4
	United/Capital	66,819	106,876	100,170	77,150	58,327	74,453	3.1	4.9	4.1	3.1	2.1	2.3
	Total	2,118,839	2,191,703	2,458,121	2,492,883	2,697,045	3,181,060	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Sources: Exhibit BER-102 Revised; Carrier Responses to Information Requests.

APPENDIX B
Page 1 of 4

ON-LINE ORIGIN AND DESTINATION PASSENGERS IN BOTH DIRECTIONS FOR SELECTED CITY PAIRS 1/
CALENDAR YEARS 1962 AND 1963

City pair and carrier	Calendar year 1962			Calendar year 1963			Percent change 1963 over 1962			Percent participation by carrier during calendar 1963		
	Total	Local2/	Connecting3/	Total	Local2/	Connecting3/	Total	Local2/	Connecting3/	Total	Local2/	Connecting3/
Jacksonville-Washington	23,690	18,100	5,590	25,340	19,790	5,550	+7.0	+9.3	-0.7	100.0	100.0	100.0
Eastern	7,350	5,700	1,650	9,980	7,880	2,100	+35.8	+38.2	+27.3	39.4	39.8	37.8
National	14,030	10,770	3,260	13,830	10,780	3,050	-1.4	+0.1	-6.4	54.6	54.5	54.9
Northeast	2,110	1,480	630	1,190	870	320	-43.6	-41.2	-49.2	4.7	4.4	5.8
Other	200	150	50	340	260	80	+70.0	+73.3	+60.0	1.3	1.3	1.5
Jacksonville-Baltimore	3,950	3,470	480	3,690	3,330	360	-6.6	-4.0	-25.0	100.0	100.0	100.0
Eastern	1,070	1,000	70	1,230	1,150	80	+15.0	+15.0	+14.3	33.3	34.5	22.2
National	1,850	1,620	230	1,730	1,550	180	-6.5	-4.3	-21.7	46.9	46.5	50.0
Northeast	870	700	170	650	550	100	-25.3	-21.4	-41.2	17.6	16.5	27.8
Other	160	150	10	80	80	0	-50.0	-46.7	-100.0	2.2	2.5	0.0
Jacksonville-Washington plus Baltimore 4/	27,640	21,570	6,070	29,030	23,120	5,910	+5.0	+7.2	-2.6	100.0	100.0	100.0
Eastern	8,420	6,700	1,720	11,210	9,030	2,180	+33.1	+34.8	+26.7	38.6	39.1	36.9
National	15,880	12,390	3,490	15,560	12,330	3,230	-2.0	-0.5	-7.5	53.6	53.3	54.7
Northeast	2,980	2,180	800	1,840	1,420	420	-38.3	-34.9	-47.5	6.3	6.1	7.1
Other	360	300	60	420	340	80	+16.7	+13.3	+33.3	1.5	1.5	1.3
Jacksonville-Philadelphia	13,460	11,670	1,790	14,600	13,310	1,290	+8.5	+14.1	-27.9	100.0	100.0	100.0
Eastern	2,070	1,840	230	5,950	5,560	390	+187.4	+202.2	+69.6	40.8	41.8	30.2
National	8,350	7,350	1,000	7,500	6,820	680	-10.2	-7.2	-32.0	51.4	51.2	52.7
Northeast	2,660	2,120	540	720	540	180	-72.9	-74.5	-66.7	4.9	4.1	14.0
Other	380	360	20	430	390	40	+13.2	+8.3	+100.0	2.9	2.9	3.1
Jacksonville-New York	74,660	62,420	12,240	82,830	69,610	13,220	+10.9	+11.5	+8.0	100.0	100.0	100.0
Eastern	28,090	24,590	3,500	38,150	33,500	4,650	+35.8	+36.2	+32.9	46.1	48.1	35.1
National	27,300	23,110	4,190	31,300	26,120	5,180	+14.7	+13.0	+23.6	37.8	37.5	39.2
Northeast	18,270	13,910	4,360	12,510	9,240	3,270	-31.5	-33.6	-25.0	15.1	13.3	24.7
Other	1,000	810	190	870	750	120	-13.0	-7.4	-36.8	1.0	1.1	1.0
Jacksonville-Boston	11,000	9,820	1,180	13,240	11,610	1,630	+20.4	+18.2	+38.1	100.0	100.0	100.0
Eastern	3,570	3,290	280	4,820	4,370	450	+35.0	+32.8	+60.7	36.4	37.6	27.6
National	4,860	4,240	620	6,580	5,690	890	+35.4	+34.2	+43.5	49.7	49.0	54.6
Northeast	2,560	2,280	280	1,810	1,520	290	-29.3	-33.3	+3.6	13.7	13.1	17.8
Other	10	10	0	30	30	0	+200.0	+200.0	0.0	0.2	0.3	0.0

ON-LINE ORIGIN AND DESTINATION PASSENGERS IN BOTH DIRECTIONS FOR SELECTED CITY PAIRS 1/
CALENDAR YEARS 1962 AND 1963

City pair and carrier	Calendar year 1962			Calendar year 1963			Percent change 1963 over 1962			Percent participation by carrier during calendar 1963		
	Total	Local2/	Connecting3/	Total	Local2/	Connecting3/	Total	Local2/	Connecting3/	Total	Local2/	Connecting3/
Miami-Washington	100,220	88,890	11,330	114,110	103,700	10,410	+13.9	+16.7	-8.1	100.0	100.0	100.0
Eastern	22,790	20,200	2,590	36,550	33,650	2,900	+60.4	+66.6	+12.0	32.0	32.4	27.9
National	66,330	58,910	7,420	71,980	65,110	6,870	+8.5	+10.5	-7.4	63.1	62.8	66.0
Northeast	10,090	9,030	1,060	4,530	4,030	500	-55.1	-55.4	-52.8	4.0	3.9	4.8
Other	1,010	750	260	1,050	910	140	+4.0	+21.3	-46.2	0.9	0.9	1.3
Miami-Baltimore	43,360	41,310	2,050	39,060	38,160	900	-9.9	-7.6	-56.1	100.0	100.0	100.0
Eastern	25,270	24,130	1,140	27,780	27,060	720	+9.9	+12.1	-36.8	71.1	70.9	80.0
National	6,840	6,660	180	8,760	8,620	140	+28.1	+29.4	-22.2	22.4	22.6	15.6
Northeast	10,830	10,110	720	2,280	2,260	20	-78.9	-77.6	-97.2	5.9	5.9	2.2
Other	420	410	10	240	220	20	-42.9	-46.3	+100.0	0.6	0.6	2.2
Miami-Washington plus Baltimore 4/	143,580	130,200	13,380	153,170	141,860	11,310	+6.7	+9.0	-15.5	100.0	100.0	100.0
Eastern	48,060	44,330	3,730	64,330	60,710	3,620	+33.9	+37.0	-2.9	42.0	42.8	32.0
National	73,170	65,570	7,600	80,740	73,730	7,010	+10.3	+12.4	-7.8	52.7	52.0	62.0
Northeast	20,920	19,140	1,780	6,810	6,290	520	-67.4	-67.1	-70.8	4.4	4.4	4.6
Other	1,430	1,160	270	1,290	1,130	160	-9.8	-2.6	-40.7	0.9	0.8	1.4
Miami-Philadelphia	127,650	124,330	3,320	145,560	142,400	3,160	+14.0	+14.5	-4.8	100.0	100.0	100.0
Eastern	66,570	65,040	1,530	74,990	73,740	1,250	+12.6	+13.4	-18.3	51.5	51.8	39.6
National	22,050	21,700	350	25,770	25,240	530	+16.9	+16.3	+51.4	17.7	17.7	16.8
Northeast	38,250	36,870	1,380	44,120	42,770	1,350	+15.3	+16.0	-2.2	30.3	30.0	42.7
Other	780	720	60	680	650	30	-12.8	-9.7	-50.0	0.5	0.5	0.9
Miami-New York	884,610	846,020	38,590	973,310	936,310	37,000	+10.0	+10.7	-4.1	100.0	100.0	100.0
Eastern	384,550	365,780	18,770	451,520	429,880	21,640	+17.4	+17.5	+15.3	46.4	45.9	58.5
National	323,820	311,880	11,940	334,160	323,270	10,890	+3.2	+3.7	-8.8	34.3	34.5	29.4
Northeast	171,070	163,570	7,500	181,690	177,420	4,270	+6.2	+8.5	-43.1	18.7	18.9	11.5
Other	5,170	4,790	380	5,940	5,740	200	+14.9	+19.8	-47.4	0.6	0.7	0.6
Miami-Boston	128,300	126,140	2,160	130,620	128,530	2,090	+1.8	+1.9	-3.2	100.0	100.0	100.0
Eastern	40,250	39,310	940	42,620	41,640	980	+5.9	+5.9	+4.3	32.6	32.4	46.9
National	6,780	6,670	110	14,970	14,620	350	+120.8	+119.2	+218.2	11.5	11.4	16.7
Northeast	81,050	79,940	1,110	72,520	71,770	750	-10.5	-10.2	-32.4	55.5	55.8	35.9
Other	220	220	0	510	500	10	+131.8	+127.3	5/	0.4	0.4	0.5

ON-LINE ORIGIN AND DESTINATION PASSENGERS IN BOTH DIRECTIONS FOR SELECTED CITY PAIRS 1/
CALENDAR YEARS 1962 AND 1963

City pair and carrier	Calendar year 1962			Calendar year 1963			Percent change 1963 over 1962			Percent participation by carrier during calendar 1963		
	Total	Local 2/	Connecting 3/	Total	Local 2/	Connecting 3/	Total	Local 2/	Connecting 3/	Total	Local 2/	Connecting 3/
Tampa 6/ -Washington	26,260	21,890	4,370	28,140	24,550	3,590	+7.2	+12.2	-17.8	100.0	100.0	100.0
Eastern	10,000	8,680	1,320	14,990	13,140	1,850	+49.9	+51.4	+40.2	53.3	53.5	51.5
National	11,530	9,770	1,760	11,420	10,010	1,410	-1.0	+2.5	-19.9	40.6	40.8	39.3
Northeast	4,310	3,150	1,160	1,080	820	260	-74.9	-74.0	-77.6	3.8	3.3	7.2
Other	420	290	130	650	580	70	+54.8	+100.0	-46.2	2.3	2.4	2.0
Tampa 6/ -Baltimore	7,520	7,020	500	6,860	6,420	440	-8.8	-8.5	-12.0	100.0	100.0	100.0
Eastern	3,310	3,030	280	2,860	2,650	210	-13.6	-12.5	-25.0	41.7	41.3	47.7
National	3,040	2,880	160	3,450	3,290	160	+13.5	+14.2	0.0	50.3	51.2	36.4
Northeast	1,010	960	50	320	280	40	-68.3	-70.8	-20.0	4.7	4.4	9.1
Other	160	150	10	230	200	30	+43.8	+33.3	+200.0	3.3	3.1	6.8
Tampa 6/ -Washington plus Baltimore 4/	33,780	28,910	4,870	35,000	30,970	4,030	+3.6	+7.1	-17.2	100.0	100.0	100.0
Eastern	13,310	11,710	1,600	17,850	15,790	2,060	+34.1	+34.8	+28.8	51.0	51.0	51.1
National	14,570	12,650	1,920	14,870	13,300	1,570	+2.1	+5.1	-18.2	42.5	42.9	39.0
Northeast	5,320	4,110	1,210	1,400	1,100	300	-73.7	-73.2	-75.2	4.0	3.6	7.4
Other	580	440	140	880	780	100	+51.7	+77.3	-28.6	2.5	2.5	2.5
Tampa 6/ -Philadelphia	20,880	19,700	1,180	23,340	22,180	1,160	+11.8	+12.6	-1.7	100.0	100.0	100.0
Eastern	5,360	5,080	280	15,630	14,840	790	+191.6	+192.1	+182.1	67.0	66.9	68.1
National	7,700	7,470	230	5,850	5,630	220	-24.0	-24.6	-4.3	25.1	25.4	19.0
Northeast	7,160	6,560	600	640	580	60	-91.1	-91.2	-90.0	2.7	2.6	5.2
Other	660	590	70	1,220	1,130	90	+84.8	+91.5	+28.6	5.2	5.1	7.7
Tampa 6/ -New York	126,420	111,170	15,250	135,190	120,720	14,470	+6.9	+8.6	-5.1	100.0	100.0	100.0
Eastern	53,540	47,980	5,560	84,180	74,880	9,300	+57.2	+56.1	+67.3	62.3	62.0	64.3
National	45,430	40,900	4,530	41,540	37,850	3,690	-8.6	-7.5	-18.5	30.7	31.4	25.5
Northeast	26,340	21,290	5,050	8,050	6,690	1,360	-69.4	-68.6	-73.1	6.0	5.5	9.4
Other	1,110	1,000	110	1,420	1,300	120	+27.9	+30.0	+9.1	1.0	1.1	0.8
Tampa 6/ -Boston	25,670	24,660	1,010	31,750	29,920	1,830	+23.7	+21.3	+81.2	100.0	100.0	100.0
Eastern	12,050	11,450	600	20,470	19,170	1,300	+69.9	+67.4	+116.7	64.5	64.1	71.0
National	4,700	4,590	110	6,460	6,190	270	+37.4	+34.9	+145.5	20.3	20.7	14.8
Northeast	8,880	8,580	300	4,780	4,520	260	-46.2	-47.3	-13.3	15.1	15.1	14.2
Other	40	40	0	40	40	0	0.0	0.0	0.0	0.1	0.1	0.0

ON-LINE ORIGIN AND DESTINATION PASSENGERS IN BOTH DIRECTIONS FOR SELECTED CITY PAIRS 1/
CALENDAR YEARS 1962 AND 1963

City pair and carrier	Calendar year 1962			Calendar year 1963			Percent change 1963 over 1962			Percent participation by carrier during calendar 1963		
	Total	Local2/	Connecting3/	Total	Local2/	Connecting3/	Total	Local2/	Connecting3/	Total	Local2/	Connecting3/
All segments	1,617,650	1,516,610	101,040	1,768,040	1,670,940	97,100	+9.3	+10.1	-3.9	100.0	100.0	100.0
Eastern	665,880	627,100	38,780	831,720	783,110	48,610	+24.9	+24.9	+25.5	47.0	46.9	50.0
National	554,610	518,520	36,090	585,300	550,790	34,510	+5.5	+6.2	-4.4	33.1	33.0	35.5
Northeast	385,460	360,550	24,910	336,890	323,860	13,030	-12.6	-10.2	-47.7	19.1	19.4	13.4
Other	11,740	10,440	1,300	13,730	12,780	950	+17.0	+22.4	-26.9	0.8	0.7	1.0

1/ The source data, based on a 10-percent continuous sample, were multiplied by 10 to arrive at the estimated total annual population.

2/ Represents passengers whose entire journey was via a single airline between a specified pair of points.

3/ Represents passengers whose journey between a specified pair of points constitutes a single-carrier portion of a total journey that involved two or more airlines.

4/ Prior to the inauguration of service at Dulles Airport on November 19, 1962, a considerable, but undetermined, number of Washington passengers originating and/or terminating their journeys at Friendship Airport on jet aircraft were ticketed as Baltimore passengers, with a resulting overstatement of Baltimore passengers and corresponding understatement of Washington passengers. For analytical purposes, the traffic data for the two cities were, therefore, combined.

5/ Percent change cannot be computed.

6/ Includes St. Petersburg and Clearwater.

Source: CAB, Competition Among Domestic Air Carriers.

APPENDIX C

SELECTED FINANCIAL DATA FOR NORTHEAST AND EASTERN
CALENDAR YEAR 1963, 12 MONTHS ENDED MARCH 31, 1964, AND FIRST QUARTER 1964

	Calendar year 1963			12 months ended March 31, 1964			First quarter 1964		
	System	Domestic	International	System	Domestic	International	System	Domestic	International
				Northeast					
Total operating revenues ($000) 1/	42,927	42,927	-	38,905	38,905	-	10,952	10,952	-
Total operating expenses ($000)	52,558	52,558	-	49,558	49,558	-	12,021	12,021	-
Operating profit (or loss) before subsidy ($000)	(9,631)	(9,631)	-	(10,653)	(10,653)	-	(1,069)	(1,069)	-
Subsidy ($000) 2/	988	988	-	1,782	1,782	-	794	794	-
Interest expense ($000)	1,302	1,302	-	1,406	1,406	-	444	444	-
Net income after special items and income tax ($000)	(15,301)	(15,301)	-	(15,679)	(15,679)	-	(784)	(784)	-

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1/ Exclusive of subsidy.

2/ As reported by carrier on CAB Form 41.

Source: CAB Form 41.

APPENDIX D

HISTORY OF MULTIPLE AUTHORIZATIONS IN CITY PAIRS CITED BY NORTHEAST (OTHER THAN EAST COAST-FLORIDA MARKETS)

Boston-Chicago

American is the only unrestricted carrier. TWA and United both provide service, but are subject to long-haul restrictions.

American was the grandfather carrier. In *Northeast Air. et al., Boston Service,* 4 C.A.B. 686 (1944), the routes of United and TWA were extended into Boston. However, in order to provide service between Chicago and Boston, both of them were required to operate over combinations of routes, and hence through service was unavailable.

In *American Air., et al., Route Consolidations,* 7 C.A.B. 337 (1946), the routes of both TWA and United were consolidated in such a way as to make possible through nonstop service between Chicago and Boston. The Board specifically found, however, that there was no need for local service in addition to that of American's, and accordingly long-haul restrictions were imposed on the authority of both carriers.[1] These long-haul restrictions are still in force.

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[1] The restriction on United's authority prohibits nonstop service between Chicago and Boston except on flights originating or terminating at Omaha, or a point west thereof, and the restriction on TWA's prohibits nonstop service between Chicago and Boston except on flights originating or terminating at Kansas City, or a point west thereof.

Boston-New York and Boston-Washington

American, Eastern, National, and Northeast hold unrestricted authority. In addition, United and TWA hold restricted authority.

American was the grandfather carrier. In *Northeast Air. et al., Boston Service,* 4 C.A.B. 686 (1944), the Board extended Northeast from Boston to New York, finding that the carrier's participation in this heavily traveled market would strengthen it, and that it would also be able to provide service between New York and other New England communities served by Northeast. In the same case, it extended Eastern from New York to Boston. This made possible Boston-New York and Boston-Washington operations by Eastern. The Board said, however, that the principal purpose of this authorization was to provide improved service for through travelers between Boston and points on Eastern's system south of Washington, and accordingly there was included in Eastern's authorization what came to be known as its "new England restriction," which provided that "Eastern shall serve Boston only on flights originating or terminating at points south of Richmond, Va., or west of Charleston, W. Va." (4 C.A.B. at p. 700).

In the *New York-Florida Case,* 24 C.A.B. 94 (1956), Eastern's long-haul restriction was removed. The Board found that there were service deficiencies in the Boston-New York market,[2] and also that removal of the restriction would give Eastern operating flexibility.

In the same case, National was extended from New York to Boston via Providence. The purpose of this extension was not to provide additional service in the Boston-

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[2] Northeast had not been a substantial participant in the Boston-New York market (24 C.A.B. at p. 110).

New York or Providence-New York markets, but rather to meet the need for first single-carrier service to Boston and Providence from Norfolk. Similarly, Northeast's extension to Florida via Washington was not granted for the purpose of benefiting Boston-Washington traffic, the Board finding that Northeast had not even proposed local service in that market.

Finally, as indicated in the discussion of the New York-Washington market (*infra,* p. 35), the Board permitted TWA and United to serve Boston, New York, and Washington on the same flight. While this made possible the carriage of local Boston-New York and Boston-Washington traffic, it was subject to long-haul restrictions.

Boston-Philadelphia

American, Eastern, National, and Northeast all hold unrestricted authority. United holds restricted authority.

American is the grandfather carrier. As a result of its extension from New York to Boston in *Northeast Air. et al., Boston Service, supra,* 4 C.A.B. 686, Eastern was able to provide Boston-Philadelphia service, subject however to the long-haul restriction imposed in that case.

As a result of National's extension from New York to Boston in the *New York-Florida Case* and because Philadelphia was an intermediate point on the New York-Florida route awarded to Northeast in the same case, both of these carriers were able to provide unrestricted Boston-Philadelphia service. Similarly, the Board's removal of Eastern's long-haul restriction in that case made possible the provision of such service by Eastern.

The Board's findings with respect to these various authorizations have already been reviewed. They show that the awards to National and Northeast were not predicated upon service in such markets as Boston-New York-Washington, and it is clear from a footnote (24 C.A.B. at p. 118), that this also applies to Boston-Philadelphia.

As a result of the adjustments to United's route which were made in the *New York-Florida Case,* that carrier too can operate between Boston and Philadelphia. These adjustments were made for purposes of traffic west of Washington, and the authority is subject to a long-haul restriction.

Chicago-Cincinnati

American and Delta hold unrestricted authority. Eastern holds restricted authority.

American was the grandfather carrier. In *Eastern A. L., et al.—Great Lakes-Florida,* 6 C.A.B. 429 (1945), Delta's route 54 was extended from Cincinnati to Chicago via several intermediate points in order to make possible first single-carrier service between Chicago and southern cities served by Delta, and to provide other benefits unrelated to the Chicago-Cincinnati local traffic.

Eastern is the third carrier with authority to operate between these two cities. This resulted from the Board's action in the *Great Lakes-Southeast Service Case,* 27 C.A.B. 829 (1958), extending its route 6 from Charleston, W.Va., to Chicago via Cincinnati. The Board's purpose was to provide single-carrier service between Chicago and points south of Charleston, as well as to provide first competitive service with Delta between Cincinnati and various southeastern points. There was no finding of a need for additional Chicago-Cincinnati local service, and indeed the Bureau affirmatively argued that there was no such need. The authorization was thus made subject to a restriction which required that flights serving Chicago or Cincinnati must originate or terminate at Charlotte, N.C., or a point south thereof.

Chicago-Denver

Continental, TWA, and United all hold unrestricted authority.

Prior to the *Denver Service Case,* 22 C.A.B. 1178 (1955), United was the only carrier operating in this market. In that case, the Board extended Continental's Denver-Kansas City route to Chicago in order to provide first competitive service between Denver and Chicago. In addition, it placed Denver on TWA's transcontinental route between San Francisco and New York. While this made possible a Denver-Chicago operation by TWA, the Board's principal purpose was not to provide a third carrier in that market, but rather to give Denver a second transcontinental service (in addition to that provided by United). The Board stated that it was "satisfied that the limited extent to which TWA will be duplicating the regional services between Denver . . . and Chicago . . . will not adversely affect the new route awarded the regional carriers" (22 C.A.B. at p. 1184).

Chicago-Kansas City

Braniff and TWA hold unrestricted authority, and Continental may operate subject to a long-haul restriction.

Prior to the *Denver Service Case,* 22 C.A.B. 1178 (1955), Braniff and TWA were authorized to operate in this market. In that case, the Board extended Continental's Denver-Kansas City route westward to the West Coast and northeastward to Chicago. Service between Kansas City and Chicago was subject to a restriction that the flights originate or terminate at Los Angeles. While there is some reference in the Board's opinion from time to time to service between Kansas City and Chicago, it is clear that the Board was primarily concerned with Denver's needs for regional service to the West Coast and to Chicago. Thus, the Board adopted the examiner's statement that "Denver is the keystone of the service hereinabove found to be required." (22 C.A.B. at p. 1287).

Chicago-Los Angeles

American, Continental, TWA, and United all hold unrestricted authority.

Prior to *Transcontinental & W.A., et al., Route Consolidations,* 8 C.A.B. 28 (1947), American, TWA, and United all had authority to operate between Chicago and Los Angeles. However, because of their existing route structures, none of them could operate a direct service. Recognizing that the advent of larger aircraft would make possible nonstop operations and that nonstop service was preferable from the point of view of the traveling public, the Board consolidated the routes of each of these carriers in order to permit them to take advantage of the anticipated technological developments.

Continental was permitted to enter this market in the *Denver Service Case,* 22 C.A.B. 1178 (1955) as a result of an extension of its Denver-Kansas City route to Los Angeles and Chicago. The Board's purpose was not to provide an additional Chicago-Los Angeles nonstop service, and indeed it stated specifically that "we are unable to find a need at this time for an additional nonstop service in this market, and our awards to Continental are not predicated upon such a need" (22 C.A.B. at pp. 1189-90). The Board, however, refused to impose a restriction against the provision of nonstop service, stating that

American, TWA, and United "are not apt to be adversely affected by any nonstop schedules which Continental may at some time choose to operate" (22 C.A.B. at p. 1306).

Chicago-Miami, Chicago-Tampa, and Chicago-Atlanta

Delta, Eastern, and Northwest all hold unrestricted authority in these markets.

Prior to the Board's decision in the *Great Lakes-Southeast Service Case*, 27 C.A.B. 829 (1958), Delta and Eastern held authority between Chicago and Miami via Atlanta. Tampa was also an intermediate point on Eastern's route. Thus, at that time, there were two carriers between Chicago and Miami and Chicago-Atlanta, and one carrier between Chicago and Tampa.

In the cited case, the Board extended Northwest from Chicago to Miami via Atlanta and Tampa, and also added Tampa as an intermediate point on Delta's existing Chicago-Miami route. As a result, all three carriers obtained authority to operate in all three of these markets.

The Board's findings are directed primarily to Chicago-Miami service. It found serious service deficiencies. For example, the record showed that flights operated "with such extravagant load factors that passengers are required to wait 3 or 4 weeks for a reservation," and that many passengers were "required to backtrack a hundred or more miles . . . to make a normally convenient connection in order to reach their destination" (27 C.A.B. at p. 1025). It further found that such deficiencies resulted not only in serious inconvenience, but that they tend to drive the public to other means of transportation, and thus result in a failure to develop the traffic potential (27 C.A.B. at p. 1026). Indeed, the Board found that the load factors experienced by these carriers had been "so abnormally high as to cast positive doubt on the adequacy of the service being rendered" (27 C.A.B. at pp. 1026-1027).

Insofar as Chicago-Tampa was concerned, the Board's finding was that it was "among the largest monopoly markets in the country, and clearly warrants the developmental benefits of competitive service" (27 C.A.B. at p. 847). It was for this reason that it was placed on Northwest's new Chicago-Miami route, and for the additional reason that the success of Northwest's operations between Chicago and Miami was thought to rest in some part upon the support to the route which major intermediate points, such as Tampa, could provide. It made no specific finding of need for a third Chicago-Tampa operator, and indeed stated that the reason for adding Tampa to Delta's existing route was to provide first competitive service between Tampa and Detroit and the other cities which Delta serves on that route (27 C.A.B. at p. 835).

Insofar as Chicago-Atlanta is concerned, the Board found that there had been abnormally high load factors, and additional authorization was required to bring about the necessary improvements in the service. It also observed that Atlanta, like Tampa, would strengthen Northwest's operations over the new Chicago-Miami route (27 C.A.B. at p. 832.)

Chicago-Philadelphia

TWA and United have unrestricted authority. American may operate between Chicago and Philadelphia, but it must do so with a stop at Washington.

The routes of all three of these carriers, insofar as they authorize service between Chicago and Philadelphia, are predicated upon grandfather authorizations. United's original authority was unrestricted. TWA's original authority resulted from a combination of services between Philadelphia and Dayton on route 2 and Dayton-Chicago on route 36. These routes were consolidated in *American Air., et al., Route Consolidations,* 7 C.A.B. 337 (1946). The Board's reasons for this action were wholly unrelated to the service between Chicago and Philadelphia, and in fact Philadelphia was not even mentioned by the Board in its discussion of the effects of its decision upon service between Chicago and eastern cities. Nevertheless, as an incidental result of the Board's action, unrestricted Chicago-Philadelphia service by TWA was possible.

American, in order to operate between Philadelphia and Chicago, must utilize its route 4, from Philadelphia to Washington, and its route 25, from Washington to Chicago. Because two routes are involved, a stop must be made at Washington.

From all of the foregoing, it is clear that the Board has never found a need for competitive Chicago-Philadelphia service.[3]

Chicago-Pittsburgh

TWA and United hold unrestricted authority in this market, the former under a grandfather certificate, and the latter as a result of the *United-Capital Merger Case.*[4] Northwest has restricted authority.

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[3] In the *New York-Chicago Service Case,* 22 C.A.B. 973 (1955), Philadelphia was added as an intermediate point on Capital's route 14 between the terminal points New York and Chicago. The Board found that this was required in order to fill the need for service between Philadelphia and Detroit (which was also an intermediate point on route 14), and that it would also make possible *new* one-carrier service for Philadelphia passengers to other points on Capital's system. This, of course, did not apply to Philadelphia-Chicago.

Capital's routes, of course, were transferred to United in the *United-Capital Merger Case, aff'd, Northwest Airlines* v. *Civil Aeronautics Board,* 303 F. 2d 395 (C.A.D.C. 1962), and thus the amount of competition now available in these markets is the same as before Capital's authorization, *i.e.,* service by three grandfather carriers.

As a result of the decision in the *United Air Lines Competitive Service Investigation,* Order E-21143 (July 31, 1964), Northwest may provide service over a combination of segments 2 and 6 of route 3. A long-haul restriction is applicable and a stop must be made at Cleveland, the segment junction point. The Board's decision was not predicated upon need for additional service in this market.

Chicago-San Francisco

American, TWA, and United all hold unrestricted authority.

The presence of a third carrier in this market likewise stems from the *Denver Service Case,* 22 C.A.B. 1178 (1955). Prior thereto, TWA and United held nonstop authority. American also held authority, but because of its route structure it was required to follow a circuitous routing involving a mandatory stop at Tulsa or Dallas, and American had thus been unable to attract as much as one percent of the traffic. The Board found that "the primary need shown on this record relates to the Bay area's need for a third nonstop service to Chicago," and that "this market is of sufficient size and importance to justify an effective service by a third transcontinental carrier" (22

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[4] Capital's grandfather routes 14 (Pittsburgh-Detroit) and 32 (Detroit-Chicago) were consolidated in *American Air., et al., Route Consolidations,* 7 C.A.B. 337 (1946), thus making possible direct Chicago-Pittsburgh service. At that time, however, a long-haul restriction was imposed. The restriction was removed in *Milwaukee-Chicago-New York Restriction Case,* 11 C.A.B. 310, 332-3 (1950), the Board finding that removal would have little competitive effect in this market, and would reduce Capital's scheduling problems. Prior to the merger, United had also been in this market, subject to a long-haul restriction. It was put in not because of need for local service, but to provide Pittsburgh with direct service to points west of Chicago. *New York-Chicago Case,* 22 C.A.B. 1022, 1027 (1955).

C.A.B. at p. 1186). Thus, all that the Board did was to make possible a more effective operation by a carrier already authorized to operate, and this in order to meet demonstrated service needs.

Chicago-Washington

American and United hold unrestricted authority. TWA and Northwest may operate subject to a long-haul restriction.

American is the grandfather carrier, and has from the beginning enjoyed unrestricted authority. Prior to 1946, TWA, United, and Capital (then PCA) each had grandfather routes which joined to permit relatively direct services with only one stop, *i.e.,* at the route junction points. In *American Air., et al., Route Consolidations,* 7 C.A.B. 337 (1946), the Board consolidated the routes of all three of these carriers in such a way as to permit nonstop service between Chicago and Washington. However, the Board found a need for only one additional unrestricted carrier, and it selected Capital. The authority of United and TWA was made subject to long-haul restrictions. The Board found that "if Chicago-Washington nonstop service by United and TWA were limited to through flights, such service would thereby receive the support of the through traffic, and Washington could be expected to receive a maximum of service to Chicago and points west of Chicago on the systems of these carriers. At the same time, the establishment of excessive and uneconomical duplication of services by these two carriers would be discouraged" (7 C.A.B. at p. 347).[5] As recently as the *Great Lakes-South-*

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[5] The restriction on United's authority provided that nonstop Washington-Chicago service could be provided only on flights originating or terminating at a point west of Omaha, and the restriction on TWA's

east Service Case, 27 C.A.B. 829, 861 (1957), the Board refused to remove these restrictions, finding no need for a third (or fourth) competitive turn-around service.

As a result of the United-Capital merger, Capital of course disappeared as an unrestricted carrier, and United, by transfer to it of Capital's certificates, acquired unrestricted authority. The net result, however, is that in this market there are still only two unrestricted carriers. This number of restricted carriers was reduced from 2 to 1.

In the *United Air Lines Competitive Service Investigation,* Order E-21143 (July 31, 1964), the number of restricted carriers was increased to two. The Board there added a new Chicago-Cleveland segment to Northwest's route 3. This made possible a Chicago-Washington service over a combination of segments, with a mandatory stop at Cleveland, the junction point. Such service is also subject to a long-haul restriction. The Board specifically found no need for an additional service geared to the local Chicago-Washington traffic.

Cleveland-Detroit

United and Eastern hold unrestricted authority. Northwest is subject to a long-haul restriction except on flights orginating or terminating at Detroit and Pittsburgh.

This pair of cities was a segment of Capital's grandfather authority between Norfolk and Detroit. In *Eastern A.L., et al., Great Lakes-Florida,* 6 C.A.B. 429 (1945), Eastern's route 6 was extended from Columbia, S.C., to Detroit via, among other intermediate points, Cleveland. While this made possible a second Cleveland-Detroit ser-

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authority was that Chicago-Washington nonstop service could be provided only on flights originating or terminating at Kansas City, or a point west thereof.

vice, the Board's action was designed to provide first single-carrier service between Detroit and Miami.

Multiple competition in this market resulted from the Board's decision in the *Detroit-Washington Case,* 8 C.A.B. 487 (1947). In that case, the Board did two things. It extended Northwest's route 3 eastward from Detroit to Washington via Cleveland and Pittsburgh, and it removed a restriction in United's certificate which had theretofore prohibited the carrier from serving Detroit and Cleveland on the same flight.[6] Thus, both were placed in a position to provide local Cleveland-Detroit service. Both, however, were made subject to long-haul restrictions. The Board's findings, while mentioning the improvement in the service between the various segments along the Detroit-Washington route (including Cleveland and Detroit), laid particular emphasis upon the new one-carrier service which would be provided to points west of Detroit on the systems of Northwest and United.

In *New York-Chicago Service (Northwest Restriction),* 23 C.A.B. 943 (1956), Northwest's certificate was amended so as to authorize turnaround service between Pittsburgh on the one hand, and Cleveland and Detroit on the other. Insofar as Cleveland-Detroit service is concerned, the net result was, of course, that the long-haul restriction no longer applied to flights originating or terminating at Detroit and Pittsburgh. The Board's purpose, however, was clearly unrelated to Cleveland-Detroit service. Rather, its decision was designed to break Capital's "virtual monopoly . . . in the Pittsburgh-Cleveland and Pittsburgh-Detroit markets" (23 C.A.B. at p. 945).

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[6] Cleveland and Detroit were intermediate points on United's route between the West Coast and Washington. The restriction had been imposed in *Northwest Air., et al., Chicago-Milwaukee-New York,* 6 C.A.B. 217 (1944), and was designed to prevent local Cleveland-Detroit service "in view of the number and variety of services presently available" (6 C.A.B. at p. 241).

Thus, at this point, there were four trunkline carriers operating in this market. Capital and Eastern were unrestricted, United was subject to a long-haul restriction, and Northwest was subject to a long-haul restriction except when engaged in local Detroit-Pittsburgh turnaround service. As a result of the United-Capital merger, the number of carriers was reduced to three.[7]

Houston-New Orleans

Eastern and National hold unrestricted authority. Delta is also authorized to operate in this market, subject to a long-haul restriction.

Prior to the *Florida-Texas Service Case,* 24 C.A.B. 308 (1956), Eastern was the only carrier holding unrestricted authority to operate between Houston and New Orleans. Delta also held authority subject to a restriction prohibiting turn-around service. National held authority to operate from Miami to New Orleans. In that case, the Board extended National's authority from New Orleans to Houston, in order to meet the need for service between Miami and Houston. As a result, National thus became able to provide New Orleans-Houston service. This was, however, purely an incidental result of the Board's decision, and the Board specifically found that "there has been no showing of need for a Houston-New Orleans local service" (24 C.A.B. at p. 320).[8]

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[7] Two local service carriers, Lake Central and North Central, also may operate nonstop between these two points, subject to long-haul restrictions. It may also be noted that there is scheduled air-taxi service between Cleveland and Detroit. Sixteen flights a day are operated.

[8] It may be noted that Eastern had sought in that case authority to provide a competitive service with National's between Miami and New

Los Angeles-Baltimore

American, TWA, and United are authorized to operate without restriction in this market.

American was the original carrier authorized to provide direct Baltimore-Los Angeles service, such authorization having resulted from a consolidation of its routes in *American Air., et al., Route Consolidations,* 7 C.A.B. 337 (1946). The authority of TWA and United results from the Board's action in the *Middle Atlantic Service Case,* 9 C.A.B. 131 (1948), in which the Board designated Baltimore as a coterminal with Washington on their routes extending west from Washington to Los Angeles. The Board found that air traffic to and from Baltimore had been underdeveloped, and that its traffic-generating potential was large. The Board found evidence of heavy traffic between Baltimore and points on the systems of TWA and United which then traveled by connecting services at Washington. As a result of its action, the Board said that TWA would be able to offer first one-carrier service to such cities as Kansas City, Columbus, Dayton, Fort Wayne, South Bend, and cities father west. It found that United would be able to provide first one-carrier service to such cities as Omaha, Denver, Salt Lake City, San Francisco, Portland, and Seattle (9 C.A.B. at p. 155).

In sum, the Board's principal purpose in this case was to provide service "to points not served by carriers pres-

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Orleans, and in support thereof referred to several city pairs on routes where the Board had recently added competitive service which generated less traffic than Miami-New Orleans. In rejecting this contention, the Board pointed out that "in each instance the compartive [city] pair referred to by Eastern for which competitive service has recently been authorized is but one of several on the route involved and in no instance does the referenced pair constitute the major economic justification for the new route" (24 C.A.B. at p. 309).

ently certificated to serve Baltimore," and indeed it is plain that the Baltimore-Los Angeles service played a very small part in the Board's determination.[9]

Los Angeles-Honolulu

Pan American and United hold authority to operate in this market. Western was authorized by the Board to provide a third-carrier service in the Domestic Phase of the *Transpacific Route Case,* Order E-16285, December 7, 1960. This certificate never became effective, however, and the Board has recently rescinded the award on the basis of factors unrelated to the finding of need for a third carrier (Order E-20178, served November 8, 1963).[10]

The Board's determination to authorize a third carrier in this market was based upon findings that the two existing carriers had experienced unreasonably high load factors, and hence that there was a space problem, and upon testimony that it was difficult to obtain firm reservations as much as three weeks prior to departure. Moreover, the Board found that the competition between the two carriers had been "soft," and that there were indications of a "gentlemanly" lack of fare experimentation. The Board also took into account Hawaii's isolation and its complete dependence upon transportation for its economic existence.

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[9] Indeed, the Board pointed out in this connection that "the September 1946 survey shows that *only* 134 Baltimore passengers traveled to and from Los Angeles and San Francisco during this month" (9 C.A.B. at p. 156, emphasis supplied).

[10] Petition for review is pending in *Western Air Lines* v. *Civil Aeronautics Board,* C.A.D.C. No. 18, 305.

Los Angeles-Las Vegas

Western and Bonanza (a local service carrier) have unrestricted operating authority. TWA and United may operate subject to long-haul restrictions.

Western was the original carrier operating between these points. In *Transcontinental & W.A., North-South California*, 4 C.A.B. 373 (1943), the Board added Los Angeles as an intermediate point on TWA's route from the East to San Francisco. As a result, TWA would have been in a position to carry Los Angeles-Las Vegas traffic. Finding insufficient traffic to justify any competitive service, however, the Board imposed a "closed-door restriction" which prohibited carriage of local traffic between the two points.

Subsequently, the Board approved an agreement between United and Western whereby one of Western's routes would be transferred to United (which included the Los Angeles-Las Vegas segment (*United-Western, Acquisition Air Carrier Property*, 8 C.A.B. 298 (1947)). In doing so, the Board imposed a closed-door restriction prohibiting United's carriage of local Los Angeles-Las Vegas traffic.[11]

In the *Las Vegas-Los Angeles Restriction Case,* 17 C.A.B. 23 (1953), the Board removed the closed-door restrictions on the authority of both TWA and United, and substituted therefor long-haul restrictions.[12] In doing so, the Board found that Western's service was weak. It also found that removal of the restrictions would eliminate uneconomic conditions. For example, the Board found that United and TWA were regularly flying planes with empty seats from Las Vegas to Los Angeles, at the same time that Western was flying empty seats in the opposite direction for the express purpose of accommodating passengers for the return trip. The Board specifically found that complete removal of all restrictions in the certificates of TWA and United would result in an unwarranted amount of competition in the Los Angeles-Las Vegas market (17 C.A.B. at p. 42).

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[11] The Los Angeles-Las Vegas segment was a part not only of the route transferred to United, but also of another of Western's routes, and the parties agreed to the imposition of the closed-door restriction in order to prevent United's competing with Western for Los Angeles-Las Vegas traffic.

[12] These restrictions provided that TWA could serve Las Vegas and Los Angeles on the same flight only when such flights originated or terminated at Albuquerque, N. Mexico, or a point east thereof. So far as United was

Bonanza first appeared in this market as a result of the *Reopened Bonanza Renewal Case,* 25 C.A.B. 362 (1957), in which the Board awarded it a new segment between Las Vegas and Los Angeles via Apple Valley and Riverside, California. The Board made it clear that service between Las Vegas and Los Angeles was "not one of the prime factors in our decision on this extension" (25 C.A.B. at p. 364). The principal reason for the award was to meet the needs of the Department of Defense which maintained an Air Force base at Apple Valley. Accordingly, Bonanza's certificate contained a condition requiring that all flights between Las Vegas and Los Angeles must stop at Apple Valley and at Riverside/Ontario (the intermediate points on the Las Vegas-Los Angeles segment).

Bonanza's condition was removed in the *Pacific-Southwest Local Service Case* (Order E-17950, January 23, 1962), thus making Bonanza the second unrestricted carrier in the market. The Board found that Western is

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concerned, it prohibited service between Las Vegas and Los Angeles on the same flight except when such flight originated or terminated at Denver, or a point east thereof.

the only carrier authorized to operate a nonstop shuttle service and to provide schedules primarily geared to the needs of the local Las Vegas-Los Angeles passengers who comprise the bulk of the traffic moving over the segment, and that Western had not fully satisfied the needs of this traffic. In this connection, the Board also noted that the long-haul restrictions imposed on operations by TWA and United limited their competitive effectiveness since origin and termination of flights at distant points prevented them from tailoring their service to the needs of the local traffic, or from offering additional capacity to alleviate space shortages on weekends and holidays.

Los Angeles-Philadelphia

American, TWA, and United all have unrestricted operating authority.

The authorizations for service in this market were made at the same time and upon the same findings as relate to the New York-Los Angeles market (*infra*, pp. 128-129).

Los Angeles-Phoenix

American and TWA hold unrestricted authority. Western and Continental may also operate between these points subject to long-haul restrictions.

Los Angeles-Phoenix was a segment in the early transcontinental certificates of both American and TWA. Western's authority to operate in this market stems from the Board's decision in the *Service to Phoenix Case,* 26 C.A.B. 193 (1957). The Board there authorized a new segment extending from Phoenix to Los Angeles, subject to a restriction which provided that local service in the market could be provided only on flights originating or terminating at Portland or Seattle. The Board's decision was designed "to satisfy Phoenix's demonstrated need for improved service to the Pacific Northwest," and it specifically found "no need for improved Phoenix-Los Angeles service" (26 C.A.B. at p. 207).

Continental's authority to operate in this market was granted in the *Southern Transcontinental Service Case,* 33 C.A.B. 701 (1961), in which it was extended from Houston to Los Angeles via Phoenix. Here again, the Board's purpose was not to provide additional local service between Los Angeles and Phoenix, but rather to provide new regional service between Los Angeles and Phoenix on the one hand, and Houston on the other. Accordingly, Continental's authority to operate between Los Angeles and Phoenix was made subject to a condition which provided that "flights scheduled to serve Phoenix * * * shall also serve Houston, Tex."[12]

Los Angeles-San Francisco

TWA, United, and Western all hold unrestricted authority in this market. Pacific, a local service carrier, also may operate subject to a restriction requiring at least one intermediate stop.

In *Transcontinental & W.A., North-South California,* 4 C.A.B. 373 (1943), the Board authorized Western to conduct an unrestricted service in competition with United. It relied upon a number of rather broad observations regarding a presumption in favor of competition on any route which offered sufficient traffic to support competing service, and observed that San Francisco-Los Angeles was the only large United States city pair served by a single carrier.

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[12] Bonanza also has authority to operate between Phoenix and Los Angeles via three intermediate points. Its authority, of course, is subject to the usual local service requirements with respect to service at intermediate points.

In the same case, the Board added Los Angeles as an intermediate point on TWA's East Coast-San Francisco service. This was done, however, primarily to support the carrier's transcontinental operations, and was not for the benefit of local San Francisco-Los Angeles traffic. Accordingly, its authority was made subject to a restriction requiring that any flight serving Los Angeles must originate or terminate at Albuquerque, or a point east thereof.

In the *West Coast Case*, 6 C.A.B. 961 (1946), the Board authorized Southwest Airways (now Pacific Air Lines) to operate a local service route between Los Angeles and San Francisco. The Board's purpose, of course, was primarily to provide service for the intermediate points, and not to provide terminal-to-terminal service.

Accordingly, it required that all terminal and intermediate points must be served on each flight. There were eight intermediate points on the San Francisco-Los Angeles route. In the same case, the Board refused to remove the long-haul restriction on TWA's authority.

In the *Pacific-Southwest Local Service Case*, Order E-17950, January 25, 1962, the Board removed TWA's long-haul restriction, thus providing for a third unrestricted operation in this market. In doing so, the Board observed that the local traffic needs of the market had not been fully met, as evidenced by the fact that a large number of passengers had been carried by an intrastate carrier, and moreover that Pacific had attracted a large amount of the traffic on its multistop service.

New York-Atlanta

Delta, Eastern, and United (by virtue of its merger with Capital) hold unrestricted authority in this market.

Prior to the *Southwest-Northeast Service Case,* 22 C.A.B. 52 (1955), Capital and Eastern were the only carriers. In that case, the Board extended Delta's route 24 (which ran from New Orleans to Atlanta) north to New York via Washington, Baltimore, and Philadelphia. It found that Capital was not providing effective competition in the New York-Atlanta market, and that this authorization was necessary in order to provide *first effective* competitive service in this market.[14]

New York-Birmingham

The carriers authorized to serve this market are Delta, Eastern, and United (by virtue of its merger with Capital). All are unrestricted.

The multiple authorizations in this market, as in the case of New York-Atlanta and New York-New Orleans, result from the *Southwest-Northeast Service Case.* Birmingham was an intermediate point on the routes of Eastern and Capital between New Orleans and New York, as well as on Delta's New Orleans-Atlanta route. As a result of the Board's extension of Delta in order to provide first effective competitive service between New Orleans and Atlanta on the one hand, and the Northeast on the other, a third New York-Birmingham service was also made possible. The Board's only finding on this score was that as a result of this extension "Delta would also be able to provide Charlotte and Birmingham with needed new service to the Southwest and Northeast (22 C.A.B. at p. 66).[15]

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[14] In the same case, the Board recognized that Capital's ineffective competition had been due in large measure to defects inherent in its route structure. Accordingly, the carrier's route was adjusted in such a way as to permit more direct service between, among other points, New York and Atlanta. The Board's findings on this point indicated, however, that its purpose in doing so was to strengthen Capital. It made no specific finding that three carriers were needed from a service standpoint in this market (22 C.A.B. at pp. 67-68).

New York-Chicago

American, TWA, and United all hold unrestricted authority. Northwest is also authorized to operate, subject to a long-haul restriction. The three unrestricted carriers have grandfather authority.

As a result of several Board decisions affecting the routes of Capital in 1944, 1946, and 1950, Capital was by 1955 also able to operate between these two cities, subject however to the requirement that a minimum of two intermediate stops be made.[16]

In 1955, the Board removed Capital's restriction, thus making that carrier the fourth unrestricted New York-Chicago operator (*New York-Chicago Service Case,* 22 C.A.B. 973). While finding the services of the existing carriers to be entirely adequate, the Board nevertheless observed that the volume of traffic is high, and that Capital's participation had been surprisingly high in view of the existence of the restriction. Accordingly, the Board concluded that there was no "present need for continuing such a restriction," and that "to continue to maintain this restriction serves only to inconvenience the New York-Chicago passengers Capital is now carrying and to bar the full utilization of high-speed, long range aircraft . . ." (22 C.A.B. at p. 1149).

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[15] Presumably, the Board's findings with respect to the lack of effective competitive service between New Orleans and Atlanta on the one hand, and the Northeast on the other, were also applicable to Birmingham-Northeast service inasmuch as it was merely an intermediate point on the routes between the large terminals.

[16] *Northwest Air et al., Chicago-Milwaukee-New York,* 6 C.A.B. 217 (1944); *American Air. et al., Route Consolidations,* 7 C.A.B. 337 (1946); and *Milwaukee-Chicago-New York Restriction Case,* 11 C.A.B. 310 (1950). It would unduly complicate discussion of this market to explain the steps which led to this situation. Suffice it to say that it did not rest upon any findings of a need for a fourth New York-Chicago operator.

In the same case, the Board added Chicago as an intermediate point on Northwest's transcontinental route (New York-Detroit-Seattle). The Board's purpose, however, was not to provide still another carrier for New York-Chicago traffic, but was designed to make it a more effective competitor in transcontinental operations and also to provide first single-plane service between points east and west of Chicago on Northwest's system.[17] Accordingly, the Board imposed a long-haul restriction requiring that flights serving Chicago must originate or terminate at Twin Cities, or a point west thereof.

As a result of the United-Capital merger, the number of unrestricted carriers in this market was, of course, reduced to three.

New York-Detroit

American, Northwest, and United all hold unrestricted authority. TWA may also operate, subject to a long-haul restriction.

American is the grandfather carrier. In *Northwest Air. et al., Chicago-Milwaukee-New York,* 6 C.A.B. 217 (1944), Capital, Northwest, and United all obtained authority. This came about in the following way:

Capital—This carrier's route 55 (Pittsburgh-Birmingham) was extended to New York. Since Pittsburgh was an intermediate point on its route 14 (Norfolk-Detroit), Capital was able to operate between Detroit and New York so long as a stop was made at Pittsburgh, the junction point of the two routes. In addition to the required stop at Pittsburgh, the Board also imposed a restriction, which provided (insofar as here pertinent) that service between Pittsburgh and New York could be operated only on flights originating or terminating at Chicago. The net effect of this was that Detroit-New York service was subject to a long-haul restriction.

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[17] At that time, Chicago could be served by Northwest only as a terminal point on flights to and from the west.

Northwest—This carrier's Seattle-Milwaukee route was extended from Milwaukee to New York via Detroit and Cleveland. The purpose of the Board's authorization was not to create an additional New York-Detroit carrier, but rather to provide improved service between New York and Detroit, on the one hand, and points in the Northwest not served by United, on the other. Accordingly, the Board imposed a long-haul restriction requiring that flights serving points east of Milwaukee must originate or terminate at the Twin Cities, or points west thereof, and New York.

United—Detroit was added as an intermediate point on United's route between New York, Chicago, and San Francisco. The purpose of the Board's action was to provide Detroit with first single-carrier service to points west of Chicago on United's route, and accordingly a long-haul restriction was imposed, which required that Detroit might be served only on flights originating or terminating at Denver, or a point west thereof, and at New York. The Board specifically found no need for a local New York-Detroit operation by United.

The most significant step in the evolution of this market is the *New York-Chicago Service Case,* 22 C.A.B. 973

(1955). The Board there removed the restrictions in the certificates of Capital and Northwest which had theretofore prevented turnaround service between New York and Detroit. The Board found that "the size and potential of the New York-Detroit market will now support three turnaround services rather than merely one heretofore operated by American" (22 C.A.B. at p. 979). It continued, "the much smaller New York-Cleveland market has two turnaround services," and "the New York-Detroit market increased by 86 per cent from 1949 to 1954. Under such circumstances, we have no hesitation in finding that the New York-Detroit market will support two additional turnaround services" (22 C.A.B. at p. 980).

In the same case, the Board added Detroit as an intermediate point on TWA's New York-Chicago-West Coast route. Its principal purpose was to provide improved service between Detroit and western points served by TWA. A long-haul restriction was imposed which required that a flight serving Detroit must originate or terminate at Kansas City, Mo., or a point west thereof, and at New York.

As a result of the foregoing decisions, there were three unrestricted carriers and two restricted carriers operating between New York and Chicago. The United-Capital merger reduced the number of restricted carriers to one.

New York-Hartford

American and Eastern hold unrestricted authority. Northeast, TWA, and United hold restricted authority.

American is the grandfather carrier. In the *New England Case, supra,* Hartford was added as an intermediate point on Northeast's route between New York and White River Junction, subject to a restriction requiring that flights serving Hartford originate or terminate at a point north of Northampton, Mass. In the same case, Hartford was added as an intermediate point on Eastern's New York-Boston segment, the Board finding that this would provide Hartford with needed one-carrier service to the Carolinas and Florida. Service to Hartford was accordingly subject to the long-haul restriction applicable to all of Eastern's points north of New York (7 C.A.B. at p. 441).

In the *New York-Florida Case,* as previously indicated, Eastern's restriction was removed thereby making possible unrestricted New York-Hartford operations. The Board made no findings with respect to the need for such service by Eastern.

In the same case, Hartford was added as an intermediate point on TWA's New York-Boston segment, upon finding that this would provide Hartford with through service to Ohio Valley Cities served by TWA. A condition was added to TWA's certificate providing that flights serving Hartford on the one hand, and New York on the other, must originate or terminate at Dayton, Ohio, or a point west thereof.

As a result of the Board's adjustments in United's routes in the *New York-Florida Case,* Hartford-New York service can also be provided by that carrier. As in the case of all of its operations north of Washington, however, service to Hartford is subject to long-haul restrictions.

New York-Los Angeles

American, TWA, and United all have unrestricted operating authority.

American and TWA were the original carriers authorized to operate between New York and Los Angeles. Each held authority under combinations of routes, and in *American Air, et al., Route Consolidations,* 7 C.A.B. 337 (1946), the Board consolidated their routes so that each would have a single route between New York and Los Angeles. In the same case, the Board consolidated various of United's routes so as to make possible a direct New York-San Francisco service.

United's authority to operate between New York and Los Angeles resulted from the Board's action in *Transcontinental & W.A., et al., Route Consolidations,* 8 C.A.B. 28 (1947). In that case, it will be recalled the Board consolidated the routes of American and TWA so as to make possible direct service between Chicago and Los Angeles. As a result, those two carriers were placed in a position to operate direct New York-Los Angeles service via Chicago. Accordingly, in the same case, the Board consolidated various routes of United in order to make possible the same service, pointing out that, otherwise, United would be placed at a disadvantage with respect to its two transcontinental competitors, and might suffer so substantial a loss as to threaten its economic position.

New York-New Orleans

Delta, Eastern, and United (by virtue of its merger with capital) may provide unrestricted service.

The circumstances leading to the existence of three authorizations in this market are substantially the same as is true of the New York-Atlanta market. Prior to the *Southwest-Northeast Service Case,* Capital and Eastern held operating authority, but as a practical matter, Eastern was the monopoly carrier since Capital had been unable to compete effectively. The record showed that the service was so poor that a substantial part of the New Orleans-New York travelers preferred train service, notwithstanding the fact that it required approximately 35 hours traveling time (22 C.A.B. at p. 164). Adverting to the service deficiencies, the Board found that extension of Delta's route 24 (Atlanta-New Orleans) to New York would meet "the need for *effective* competitive service between New Orleans and the Northeast" (22 C.A.B. at pp. 65-66; emphasis added).

New York-Providence

American, Eastern, National, and Northeast hold unrestricted authority in this market, and United has restricted authority.

American was the grandfather carrier. In the *New England Case*, 7 C.A.B. 27 (1946), Povidence was made an intermediate point on Eastern's Boston-New York route, and it was thus subject to the long-haul restriction previously mentioned. In the same case, Northeast was given Providence-New York authority. The Board found that its action would make possible service by Eastern between Providence and points beyond New York not served by American, and also would provide additional local service between Providence and New York. While referring to the high degree of public acceptance of air transportation since the war as justification for additional service, the Board made no finding of any specific need therefor.

As a result of National's extension from New York to Boston via Providence in the *New York-Florida Case*, that carrier was enabled to provide New York-Providence service. The Board's findings, however, show that the purpose of this authorization was *not* to provide additional local service, but rather to meet the needs of Norfolk-Providence traffic.

As previously indicated, Eastern's long-haul restriction was removed in the *New York-Florida Case.* In doing so, the Board made no finding with respect to the provision of Providence-New York service. The same is true with respect to the adjustments made to United's route, as a result of which it can provide New York-Providence service, subject to a long-haul restriction.

New York-St. Louis

American, Eastern, and TWA all have unrestricted nonstop authority.

Prior to 1957, TWA was the only carrier with unrestricted rights in this market. American and Eastern both had authority to operate between New York and St. Louis, but could not provide nonstop service, inasmuch as each city was on different routes, and hence stops were required at route junction points. In the *Eastern Route Consolidation Case,* 25 C.A.B. 22 (1957), the Board consolidated the routes of both American and Eastern with the result that both were then able to offer nonstop service in competition with TWA.

The Board found that, in the absence of effective competitive opportunity for either American or Eastern, TWA had not provided the schedules necessary for the full development of the market. It found that almost 20 percent of the traffic had moved via the more circuitous one-stop routings of American and Eastern in preference to TWA's nonstop service (25 C.A.B. at pp. 217-218). The Board also noted that American and Eastern had long been established in the New York-St. Louis market

(Eastern since 1943, and American since prior to the passage of the Act in 1938), and that removal of the restriction would simply restore the competitive balance theretofore existing by permitting Eastern and American to take advantage of the technological developments which made possible the more desirable nonstop service (25 C.A.B. at p. 262). In addition, the Board pointed out that its decision would place St. Louis on a second transcontinental route thereby improving its service to the West (25 C.A.B. at p. 218).[18]

New York-San Francisco

American, TWA, and United all hold unrestricted authority in this market.

Prior to 1947, TWA and United were the only carriers in this market. In that year, in the *West Coast Case,* 8 C.A.B. 14, 27, the Board extended American's transcontinental route 4 (Boston-New York-Phoenix-Los Angeles) from Phoenix to San Francisco, subject, however, to a condition that service to San Francisco be provided only on flights serving Dallas or Tulsa, or some other southwestern city. The Board's purpose in granting the extension was, among other things, to preserve American's historic participation in San Francisco traffic theretofore carried by connection with other carriers at Los Angeles. The restriction was designed to preclude "nonstop service between San Francisco-Oakland and points in the East served commonly by American and either TWA or United" (8 C.A.B. at p. 18).

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[18] The Board also said that smaller markets than New York-St. Louis had three nonstop carriers. However, the Board expressly stated that its award did not rest on the size of the markets alone.

In the *Denver Service Case,* 22 C.A.B. 1178 (1955), American sought unrestricted New York-San Francisco authority but the Board determined that it should not be awarded. Nevertheless, in that proceeding, American was authorized to conduct operations to San Francisco via Chicago, and hence could then operate one-stop service between New York and San Francisco. The Board's action rested not only upon a finding of need for a third carrier between San Francisco and Chicago, but also upon the fact that American would "be in a position to continue its participation as the third transcontinental carrier between the Bay area and New York . . ." (22 C.A.B. at p. 1187). Its refusal to grant unrestricted authority was prdicated upon a desire to achieve balanced competition (22 C.A.B. at p. 1188)

In the *New York-San Francisco Nonstop Service Case,* 29 CA.B. 811 (1959), the Board removed the restriction against the provision of nonstop service New York and San Francisco by American. The Board found that there had bene various deficiencies in the service of United and TWA, that TWA had not matched the quantity or quality of United's service and "was not a full-time vigorous competitor," and that the New York-San Francisco market has not in the past received the type of vigorous competition which its size and economic strength warrant (29 C.A.B. at p. 819). The Board also found that American had in the past been an active participant in the traffic involved, and that the removal of the nonstop restriction "constitutes another adjustment in the carrier's route structure necessitated by still further technological advances in trunkline equipment in order to permit continuation of the benefits of a third transcontinental service between San Francisco and Nec York" (29 C.A.B. at p. 814).

Finally, the Board found that this was one of the most important lucrative markets in the nation, that comparable long-haul markets have multicarrier, nonstop service (22 C.A.B. at p. 812), and that since recently improved service by TWA and United had not been fully explained in terms of equipment shortages reliance could not be placed on their assurances of future improvements (22 C.A.B. at pp. 819-820).

New York-San Juan

Eastern, Pan American, and Trans Caribbean all hold unrestricted authority in this market. Trans Caribbean's authority, however, has expired, and it continues to operate at this time pursuant to the provisions of Section 9(b) of the Administrative Procedure Act.

The original carrier in this market was Pan American, which was authorized to provide service in *Latin American Air Service*, 6 C.A.B. 857 (1946).

In the *Additional Service to Puerto Rico Case*, 12 C.A.B. 430 (1951), Eastern was given authority for a five-year period. The Board found that the greatest need was for a low-cost transportation service which had not been provided by Pan American.

In the *Service to Puerto Rico Case*, 26 C.A.B. 72 (1957), Eastern's certificate was made permanent, and Trans Caribbean was authorized to operate under a five-year certificate. In certificating a third carrier, the Board adopted the following findings of the examiner:

> "As indicated previously, the traffic volume over the New York-San Juan route compares favorably

with traffic moving over domestic segments where the Board has found a necessity for more than two carriers. This fact, coupled with the high load factors maintained by both Pan American and Eastern on their coach flights and particularly on their low-fare service, . . . justifies the conclusion that there is a public need for a *third carrier dedicated to providing* a low-cost service on an experimental basis" (26 C.A.B. at pp. 151-152). (Emphasis added.)

New York-Washington

American, Eastern, National, and Northeast hold unrestricted authority. Braniff, Delta, TWA, and United hold restricted authority.

American and Eastern were grandfather carriers. In *Colonial Air., Atlantic Seaboard Op.*, 4 C.A.B. 552 (1944), National was extended frim Jacksonville to New York via Philadelphia, and in *Middle Atlantic Area Case,* 9 C.A.B. 131 (1948), Washington was placed on this route for the purpose of providing service between Washington and points south. Accordingly, a restriction against turnaround New York-Washington service was imposed.

In the *Southwest-Northeast Service Case,* 22 C.A.B. 52 (1955), Braniff, Capital, and Delta were extended from southern and southeastern points to New York via Washington. Long-haul restrictions prohibiting New York-Washington turn-around service were imposed since "additional services between these points are [not] required" (22 C.A.B. at p. 249).

In the *New York-Florida Case,* 24 C.A.B. 94, National's restriction against turn-around service was removed, and, of course, Northeast was extended south of New York to Florida via, among other points, Washington. While the Board found no need for additional service in this market and Northeast had proposed none, it declined to restrict Northeast's service, on finding that this might interfere with its flexibility of operations and impede its climb to self-sufficiency. Somewhat similarly, in removing National's restriction, the Board simply said that it saw no real reason for the restriction, and that National could provide turn-around service "if it chooses." National had in fact proposed little service (24 C.A.B. at p. 118).

TWA and United were authorized in that case to serve Boston, New York, and Washington on the same flight. The Board found that these carriers could already serve each of these points on different flights, and its authorization here was designed to permit them to combine traffic from smaller points on their systems west of Washington. Accordingly, the Board imposed long-haul restrictions on the authorizations of both carriers.[19]

Portland-Seattle

~~Northwest, United~~, and Western hold unrestricted authority. West Coast Airlines, a local service carrier, may provide service with a minimum of one intermediate stop.

United is the grandfather carrier. Prior to the *Portland-Seattle Service Case*, 17 C.A.B. 682 (1953), Western was also able to operate between these points on its San Diego-Seattle route, subject, however, to a long-haul restriction which prohibited service between Portland and Seattle on flights which did not originate or terminate at San Francisco, or points south thereof.

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[19] In the case of TWA, the restriction provided that the carrier could render service between Washington and New York only on flights which (a) also serve Tulsa-Oklahoma City, Oklahoma, or (b) which originate or terminate at Dayton, Ohio, or a point west thereof. In the case of United, the restriction provided that flights serving a point north of Baltimore must originate at Toledo, Ohio, or a point west thereof.

In the cited case, the Board removed Western's long-haul restriction, thus making possible turn-around service between Portland and Seattle. In doing so, the Board noted that United provided no shuttle flights between the two cities. Rather, all of the service provided was on long-haul flights either to the East or to California, with the result that it was subject to the delays inherent in such flights. The Board also found that removal of the restriction and the provision of turn-around service by Western would provide far more efficient utilization of equipment (17 C.A.B. at 703).

In the same case, the Board designated Portland and Seattle as co-terminal points on Northwest's route to the East. While Northwest would thereby be able to operate local service between Portland and Seattle, this was not the purpose of the Board's authorization. Rather, it was designed to improve service between Portland and Seattle on the one hand, and Northwest's points in the East on the other. Indeed, the Board found that there was insufficient local traffic to support three-carrier competition, and it anticipated that the "nature of the Portland-Seattle segment is such that it is not likely that an excessive amount of competitive service will be operated. The segment is only 129 miles in length and is only a minor cog in the long-haul systems of the three carriers" (17 C.A.B. at p. 705).

San Francisco-Honolulu

Pan American and United hold unrestricted authority to operate in this market. Western was authorized by the

Board to provide a third-carrier service in the Domestic Phase of the *Transpacific Route Case*, Order E-16285, December 7, 1960. This certificate never became effective, however, and the Board has recently rescinded the award on the basis of factors unrelated to the finding of need for a third carrier (Order E-20178, served November 8, 1963).

The findings with respect to this market are the same as those with respect to the Los Angeles-Honolulu market.

Order

Order No. E-21550

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 1st day of December, 1964

NEW YORK-FLORIDA RENEWAL CASE
Docket 12285 *et al.*

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That an amended certificate of public convenience and necessity in the form attached hereto be issued to Northeast Airlines, Inc., for route 27;[1]

2. That said certificate shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board and shall be effective 60 days after issuance of any final judgment by the United States Court of Appeals for the First Circuit affirming this order;

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[1] The certificate to be issued to Northeast includes the certificate amendment directed in Order E-20658, dated April 6, 1964, in the *Northeast Airlines Service to Millinocket, Maine Case* (deletion of Millinocket, Maine). It does not, however, include the certificate amendment directed in Order E-20901, dated June 5, 1964, in the *New England Regional Airport Investigation* (deletion of Lawrence, Massachusetts), inasmuch as a petition for judicial review of that decision is presently pending.

Order

3. That the applications of Northwest Airlines, Inc., in Docket 12709 and of Airlift International, Inc., in Docket 12706 be and they hereby are dismissed;

4. That, except to the extent otherwise indicated, all applications consolidated herein be and they hereby are denied, and all investigations involved herein be and they hereby are terminated;

5. That a certified copy of the foregoing opinion and this order, together with the statements of position heretofore received, be transmitted to the United States Court of Appeals for the First Circuit.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Certificate of Public Convenience and Necessity (as amended) for Route 27

Issued pursuant to Order No. E-21550

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

NORTHEAST AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in air transportation with respect to persons, property, and mail, as follows:

1. Between the terminal point New York, N.Y.-Newark, N.J., the intermediate point Worcester, Mass., and (a) beyond Worcester, Mass., the intermediate point Manchester-Concord, N.H., and (i) beyond Manchester-Concord, N.H., the intermediate points Laconia and Whitefield, N.H., and the terminal point Berlin, N.H., and (ii) beyond Manchester-Concord, N.H., the intermediate points Portsmouth, N.H., Portland, Brunswick, Lewiston-Auburn, Rockland, Augusta-Waterville, Bar Harbor, and Bangor, Maine, and the terminal point Presque Isle-Houlton, Maine; and (b) beyond Worcester, Mass., the intermediate points Boston and Lawrence, Mass., Portsmouth, N.H., Portland, Brunswick, Lewiston-Auburn, Rockland, Augusta-Waterville, Bar Harbor, and Bangor, Maine, and the terminal point Presque-Isle-Houlton, Maine;

Certificate of Public Convenience and Necessity (as amended) for Route 27

2. Between the terminal point New York, N.Y.-Newark, N.J., the intermediate point New London, Conn., and (a) beyond New London, Conn., the terminal point Boston, Mass., and (b) beyond New London, Conn., the intermediate points Newport, R.I., New Bedford-Fall River, Martha's Vineyard, Nantucket, and Hyannis, Mass., and the terminal point Boston, Mass.;

3. Between the terminal point Boston, Mass., the intermediate points Lawrence, Mass., Manchester-Concord and Laconia, N.H., White River Junction, Montpelier-Barre, and Newport, Vt., and the intermediate point Burlington, Vt.;

4. Between the terminal point Portland, Maine, the intermediate points Lewiston-Auburn, Maine, Berlin, N.H., Montpelier-Barre and Newport, Vt., and the terminal point Burlington, Vt.;

5. Between the terminal point New York, N.Y.-Newark, N.J., the intermediate points Hartford, Conn., Springfield, Mass., Keene, N.H., White River Junction, Montpelier-Barre and Newport, Vt., and the terminal point Burlington, Vt.

The service herein authorized is subject to the following terms, conditions, and limitations:

(1) The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

Certificate of Public Convenience and Necessity (as amended) for Route 27

(2) The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the effective date of this certificate, and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points prior to the effective date of this certificate. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

(3) The holder shall serve at least two intermediate points south of Burlington, Vt., on each flight operated by the holder between New York, N.Y.-Newark,. N.J., on the one hand, and Burlington, Vt., or Montreal, Canada, on the other hand.

(4) The holder shall serve Hartford, Conn., and Springfield, Mass., only on flights originating or terminating at Keene, N.H., or a point north thereof.

(5) The holder shall serve Bar Harbor and Rockland, Maine, and Laconia, Whitefield, and Berlin, N.H., only during the period between May 25 and the termination of Daylight Saving Time under Massachusetts Laws, inclusive, of each year: *Provided, however,* That the holder may, in its discretion, commence

Certificate of Public Convenience and Necessity (as amended) for Route 27

service at any one or more of said points in any year later than May 25, but not later than June 15.

(6) The authorization to serve Newport, Vt., shall be confined to the period between June 15 and September 15, inclusive, of each year.

(7) The holder's authority to serve New London, Conn., is suspended for the period during which Allegheny Airlines, Inc., is authorized to serve such point.

(8) Augusta-Waterville and Presque Isle-Houlton, Maine, and Manchester-Concord, N.H., shall each be served through a single airport.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective 60 days after issuance of any final judgment by the United States Court of Appeals for the First Circuit affirming the Board's order of December 1, 1964 (Order E-21550).

In witness whereof, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 1st day of December, 1964.

Harold R. Sanderson
Secretary

(Seal)

Opinion and Order on Reconsideration

Order No. E-21872

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 5th day of March, 1965

NEW YORK-FLORIDA RENEWAL CASE
Docket 12285 *et al.*

BY THE BOARD:

Petitions for rehearing and/or reconsideration of the Board's opinion and order on remand (E-21550) have been filed by Allegheny Airlines, Northeast Airlines, and two groups representing Northeast's employees.[1] Answers in opposition have been filed by Eastern Air Lines and National Airlines.[2] Upon consideration of the petitions, we

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[1] International Association of Machinists and the Master Executive Council of Northeast Pilots. This petition merely adopts by reference the one filed by Northeast.

[2] In addition, the Board of County Commissioners of Broward County, Florida, has filed a copy of a resolution urging "the continuance of the operation of Northeast Airlines into the Florida market." The Mayor and City Council of Baltimore have filed an answer in support of Allegheny's petition.

Northeast has also tendered a reply to Eastern's answer and contends that the Board is required to accept it notwithstanding the provisions of Sections 302.6(b) and 302.4(f)(1) of the Board's Rules of Practice. It relies upon the Court's order of December 15, 1964, which authorized the Board to receive and consider Northeast's petition for reconsideration, together with "any responses and/or replies which may be appropriate in connection therewith." We find no basis for construing the Court's order as authorizing the filing of pleadings which the Board's regulations have concluded that the relief requested is not required as a matter of law or administrative discretion.

1. Northeast argues that the Board's findings on remand are based upon officially-noticed facts which occurred (or became available for the first time) subsequent to the formal close of the evidentiary record. It contends that under Section 7(d) of the Administrative Procedure Act the Board must afford it an opportunity to rebut or explain the facts officially noticed.[5]

In our original decision we found that Northeast could not be expected to achieve and maintain profitable operations. This conclusion rested in part upon our evaluation of Northeast's experienced results and of East Coast-Florida traffic volume over the years subsequent to the carrier's certification south of New York. In reconsidering our decision pursuant to the Court's mandate, the evidence upon which we based our original determination with respect to Northeast's prospects for economic opera-

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forbid and as stripping the Board of discretion to determine whether good cause has been shown for making an exception. Indeed, the Court's reference to such pleadings "as may be appropriate" suggests the contrary.

The proposed reply seeks merely to challenge as erroneous Eastern's legal arguments with respect to issues fairly raised by Northeast's petition. If this were good cause, the rule against replies would be meaningless and replies would become the rule. Nevertheless, because of the unusual procedural posture of this case, we have decided to accept the reply and have considered it in disposing of Northeast's petition.

[5] Section 7(d), 5 U.S.C. 1006, provides in pertinent part:

> "The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision . . . Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary."

tion led us to the same conclusion that it had before. Before reaching a final conclusion, however, we deemed it appropriate to look to more recent operating results and traffic statistics in order to determine whether a different result was required or, at least, whether the proceeding should be reopened for further exploration of the question. Upon the basis of Northeast's experience through the first quarter of 1964 and of the East Coast-Florida traffic through the year 1963, we concluded that our original judgment was sound.[4] It is around our use of these materials that most of the Section 7(d) controversy revolves.

Much of the argumentation on this point concerns the question of whether the Board officially noticed these data or whether they were technically a part of the record through stipulation of the parties, including Northeast. In the view we take of the matter, however, it becomes unnecessary to attempt to resolve this dispute, for we conclude that in any event Section 7(d) does not require the reopening demanded by Northeast.

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[4] In our original opinion, we had relied upon Northeast's results and traffic volume through the first quarter of 1963. We think this was obviously a sufficiently representative period upon which to base a reasonable judgment as to Northeast's prospects for economic operations, embracing as it does Northeast's actual experience and the total traffic for the entire 6½ year period subsequent to the carrier's certification. Northeast apparently concedes this *for purposes of a decision favorable to it,* since its position on remand was that the Board should, without further ado, grant the renewal application.

Northeast is in error when it asserts that "the formal record was closed . . . on August 30, 1962 and contained complete data only through the first quarter of 1962" (Petition, p. 8). While the taking of testimony was completed on August 30, 1962, the parties continued to supply for the record monthly traffic statistics in accordance with the Bureau's revised request for evidence (Section II.B). This material was supplied through the first quarter of 1963 and both the majority and the minority relied upon it in their original opinions. Indeed, Northeast itself relied upon it in its brief to the Board.

As the opinion on remand indicates, we turned to the more recent data primarily to determine whether there had been "sufficient change in circumstances to warrant reopening." In our view, Section 7(d) is inapplicable to such a determination. To hold otherwise would lead to the anomalous result that an agency must hold a hearing in order to decide whether a hearing is warranted. We cannot accept this construction of the law.

Moreover, the obvious purpose of Section 7(d) is to give a party a chance to contradict the facts officially noticed. "It provides that, where a decision rests in whole or in part on official notice of a material fact, any party must on timely request be given an opportunity to show the true facts."[5] We assume, for purposes of argument, that Northeast is correct in asserting that this is not necessarily limited to outright contradiction of the facts assumed by the agency to be true, but also may include presentation of related facts explanatory of the ones officially noticed. Such, however, is not the nature of Northeast's request. It seeks not to contradict or explain the facts utilized by the Board. Rather, its contention is simply that still more recent data, largely of the same sort, together with testimony as to the significance thereof, would point to a conclusion on the merits different from that reached by the Board. Thus, Northeast's petition is more in the nature of a contention that the record is unduly stale and that the Board should consider more recent data. Accordingly, we shall proceed to consider whether Northeast's offer of proof warrants further proceedings or reconsideration.[6]

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[5] The quotation is from the explanation of the section given during debate by Congressman Walter, co-author of the Administrative Procedure Act. It is contained in Administrative Procedure Act, Legislative History, Sen. Doc. 248, 79th Cong., 2d Sess., p. 365.

Northeast offers to show that it achieved system operating profits subsequent to May 8, 1964, the date of the remand by the Court of Appeals. It is true that during July and August of 1964, the carrier reported an operating profit, so that it showed a net operating profit of $371,832 for the quarter ended September 30, 1964.[7] Subsidy payments during the same quarter, however, amounted to $989,395. Thus, but for almost $1 million of subsidy, the third quarter of 1964 would have been another chapter in the familiar story of heavy operating losses. Moreover, in October, 1964, Northeast incurred an operating loss of $146,559, although it received slightly more than twice as much in subsidy ($296,093)[8] and for the seven-month period ended October 31, 1964, the carrier's net operating loss was $373,273, despite subsidy payments totaling

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[6] Even if Section 7(d) be viewed as technically applicable, we are of the opinion that the Board may properly assess the showing which a party proposes to make thereunder in order to determine whether further proceedings are warranted. See *Latin American Air Freight Case,* 16 C.A.B. 107, 111 (1952); *Spearfish Suspension Case,* 18 C.A.B. 657, 658 (1954).

[7] Northeast Airlines Interim Financial Reports for July and August, 1964, and Form 41 (Schedule P-1.2) for the quarter ended September 30, 1964, revised as of November 13, 1964. We assume that Northeast has no objection to our consulting its more recent financial reports since it castigates the Board for alleged failure to do so prior to release of the opinion on remand (Petition for Reconsideration, p. 15). The fact is that we did and found nothing which altered the conclusion therein reached.

[8] Northeast Airlines Interim Financial Report for October, 1964.

$2,132,384.[9] We are of the opinion, therefore, that Northeast's reported experience since May 8, 1964, affords an insufficient basis either for further proceedings with respect to its prospects for economic operation or for reconsideration of our earlier judgment on that question.

Northeast also offers to show that total East Coast-Florida traffic has increased. Specifically, it alleges that in 1963, there were 103,931 more passengers than in 1962, an increase of 5.9 percent, and that during the 12-month period ended October 31, 1964, there were 155,341 more than in 1963 and 259,272 more than in 1962, increases of 8.3 and 14.7 percent, respectively. Moreover, Northeast proposes to show that the traffic it carried in its "principal Florida markets" during August, September, October, and November of 1964 was substantially greater than in the corresponding months of 1963.

We will accept Northeast's figures for purposes of disposing of the petition for reconsideration since the traffic surveys for the periods subsequent to the first quarter of 1964 have not yet been published. In our judgment, however, Northeast's proffer does not establish a sufficient basis for further proceedings or for reconsideration. While Northeast's figures do indicate some further growth in total East Coast-Florida traffic during the 12-month period ended October 31, 1964, we continue to believe that it fails to presage a "new trend of rapid and substantial growth." Viewing it in the context of the market's per-

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[9] Northeast's Forms 41 for the quarters ended June 30, 1964 and September 30, 1964, and Interim Financial Report for October, 1964. The exact figures are as follows:

	2d Qtr.	*3d Qtr.*	*Oct.*	*Total*
Subsidy	$846,896	$989,395	$296,093	$2,132,384
Operating profit or (loss)	(598,546)	371,832	(146,559)	(373,273)

formance over the years, we note that the total traffic alleged for that period is only 172,036 greater than the traffic in 1959 (the peak year since Northeast's extension south of New York). This represents an average annual growth of less than two percent. It is only about 20 percent more traffic than in 1957, an average annual growth of about 2.9 percent. Thus, Northeast's figures fit into the historic pattern (see Appendix I to the excerpts from the initial decision adopted by the Board) which led the examiner and the Board to conclude that "these markets are reaching maturity, leveling off to around 1 to 5 percent annual rate of increase or decrease depending on usual circumstances affecting traffic in these markets." [10]

Moreover, despite the alleged increases, both in total East Coast-Florida traffic and in passengers carried by Northeast, and despite very substantial subsidy payments, the carrier has continued to conduct a loss operation. Accordingly, as we said in the opinion on remand, "we adhere to the conclusion previously reached that there is no basis for renewing Northeast on the expectation that traffic growth will lead it to profitable operation." [11]

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[10] Certainly the proffer of expert testimony as to the "significance" of these figures does not warrant further proceedings. See *Market Street Ry. Co.* v. *Comm'n*, 324 U.S. 548, 560 (1945).

[11] Northeast also offers to show that, since the date of the Court's remand, the traveling public and the travel agency industry have "begun to regard Northeast as a likely permanent carrier in the East Coast-Florida market" (Petition, p. 12). The obvious purpose of this would be to further Northeast's contention that it has been hampered by the temporary character of its authority. We see no occasion to pursue this matter further, since we have already recognized that the temporary nature of the certificate may well have had some adverse effect upon it, but have concluded that its failure to achieve profitable operations was attributable to other and more fundamental causes. Moreover, to the extent that Northeast is asserting that, oher things being equal, the traveling public prefers a permanently certificated carrier to one whose authority is

2. Northeast also complains that the opinion on remand contains no findings specifically directed to the need for continuation of its Boston-Philadelphia and Boston-Washington operations. It contends that the Board may not dispose of its application on an all-or-nothing-at-all basis and that there is no evidence that its operations in these markets have not contributed to the financial benefit of the carrier.

In our opinion, the contention comes too late. Insofar as commuter operations are concerned, our original opinion did not differ from the one on remand and, like the latter opinion, it concluded that Northeast's application should be denied *in toto*. In neither its petition for reconsideration nor its petition for judicial review did Northeast allege that the Board had improperly denied authority for these operations, probably because in truth the application was not prosecuted and the proceeding was not litigated in terms of such a partial renewal in the event full renewal should be denied.[12] Whatever the reason, however, the fact is that the issue has not heretofore been raised. Since the sole purpose of this remanded proceeding is to reconsider Northeast's application in the light of the Court's decision and since that decision had nothing to do with partial renewal in commuter markets, we do not believe that Northeast should now be permitted to raise this completely new issue.

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temporary, its own experience, as reflected in this record, is to the contrary. For example, in 1961, when the public had no basis for considering it a "likely permanent carrier," Northeast carried more Boston-Miami passengers than Eastern and National combined. The same was true of Philadelphia-Tampa traffic in 1960.

[12] Indeed, as subsequently appears, Northeast's position was that there should not be a partial renewal which would terminate its system at Washington. This is to be contrasted with Northeast's request for partial renewal of its Florida route in the event of denial of full renewal.

Even if the issue were properly before us, we would not grant the relief requested, for we are unable to find that renewal of Northeast in these two markets is required by the public convenience and necessity. The record abounds with evidence that operations over a system terminating at Washington would result in substantial losses. Thus, Northeast's chief financial officer testified to "the futility of operations inherent in a short haul system such as those which would exist if Northeast's route structure were severed at either Washington or New York," adding that "substantial subsidy claims would be necessary to enable the carrier to survive."[13] Northeast's exhibits predicted a system operating loss of $3.5 million for 1963 in the event of renewal only to Washington.[14] Moreover, Northeast showed an operating loss of $3.3 million during the first six months of 1962 in the performance of short-haul operations (regional New England and commuter services)[15] and, in predicting operating results for 1963 with full renewal, the carrier forecast a loss of $2.7 million on short-haul operations.[16]

None of the revenue and expense analyses relating to short-haul service segregates the various individual markets. To be sure, there is some general testimony that

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[13] NEA Exhibit Testimony F, p. 19. The same witness also stated that "it is evident that Northeast's problems can only be solved through demonstrated earnings and that earnings are solely dependent on the long-haul route to Florida" (*ibid.*). During cross-examination he emphasized: "I would reiterate that statement a thousand percent, a short-haul route structure terminating into Washington or New York could not possibly sustain [attain?] selfsufficiency" (Tr. 1901). To the same effect, see the testimony of Northeast's President at Tr. 692.

[14] NEA 1005. The Bureau also forecast substantial losses from a system terminating at Washington (BER-R-307-B Revised).

[15] NEA 1002.

[16] NEA 1003, 1004.

Northeast's Boston-Philadelphia and Boston-Washington services had been "profitable" (although its president characterized them as only "a little bit better than marginal" at then-existing levels of participation (Tr. 560-561).[17] Moreover, Northeast's various forecasts with respect to short-haul operations seem to have assumed that these two markets would yield profits.[18] The only specific in the record, however, is the testimony of Northeast's chief financial officer who stated that, in predicting the 1963 loss on short-haul operations in the event of full renewal, Northeast assumed a profit of $50,000 in the Boston-Philadelphia market, and he was quick to add the caveat "that this included the jet trip running through in the long-haul market" to Miami (Tr. 1581). We cannot accept Northeast's showing as a suitable basis upon which to make a reasonable judgment as to the contribution, if any, which operations in these two markets might make to Northeast's financial benefit in the event of partial renewal. Furthermore, we find nothing else upon which to predicate a sound forecast.[19]

Finally, even assuming that the revenues derived by Northeast from operations in these two markets might exceed the system costs properly allocable to them (and the testimony just quoted suggests that any such profit could not be expected to be substantial), there remains the problem of the effect which an authorization might have upon over-all system operations and costs. It is obvious that any success which Northeast is to have in these markets depends upon the use of equipment competitive with that of the trunklines operating in them. It is equally obvious, as Northeast concedes (Tr. 560), that the equipment which it has been using is inappropriate for local New England service. As we said in our original opinion and in the opinion on remand, Northeast's use of this equipment in New England has resulted in "an even more costly local operation" than prior to its certification south of New York. It is of course possible, at least in theory, that Northeast might operate one type of equipment in the commuter markets and another in New England. Northeast has not, however, offered any showing in this regard and hence the only basis which we have for decision is the past and present pattern of operation. There is nothing upon which we can base a finding that any profit which Northeast might derive from commuter operations would even offset the increased costs of New England service resulting from its use there of the equipment needed in the commuter markets. Accordingly, and particularly since numerous other carriers hold authority for operations between these points, we are unable to find that the public convenience and necessity require renewal of Northeast's authority for Boston-Philadelphia and Boston-Washington operations.

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[17] He added that "anything less than the participation which we presently enjoy I am sure would reduce their profitability" (Tr. 561). In this connection, we note from Appendix J to the original dissent that Northeast's participation in the Boston-Washington market during the first quarter of 1963 was 18 percentage points less than its 1962 participation, although Boston-Philadelphia rose slightly.

[18] This is clearly the case with NEA 1003 and 1004 which dealt with operating results in the event of full renewal. It also seems to be true of NEA 1005 which assumed renewal as far south as Washington.

[19] We note in this connection that Northeast casts its contention in the negative. It does not assert that the record shows that such operations would be profitable. Rather, it asserts that the record does *not* show that they would *not* be profitable. Nor has it proffered any additional facts to support the view that they would be profitable.

3. Allegheny contends in its petition for reconsideration that "substantial evidence of record" requires grant of its

applications for Philadelphia-Boston and Baltimore-New York nonstop authority, or at least their deferral for concurrent consideration with its application, filed August 26, 1964, for renewal of its Washington-Boston authority (Docket 15496).

In our original decision in this case, we denied Allegheny's applications. We later rejected its petition for reconsideration, in which it contended, as it does now, that the record requires grant of these applications. Allegheny did not seek judicial review. Thus, our denial of its applications has long since become final.

We do not believe that the foregoing conclusion is affected by the fact that the Court of Appeals set aside our original order in the review proceedings brought by Northeast. Denial of Allegheny's applications was wholly unrelated to our action on Northeast's application and the sole issue in the review proceeding was the legality of that action. Moreover; the court decided only that our findings were deficient. In these circumstances, we cannot accept any contention that the Court's judgment disturbed the Board's action with respect to Allegheny's two applications.

It is true that our opinion on remand took the form of a complete recast of the original opinion and thus included findings with respect to Allegheny's applications. This, however, was merely for purposes of convenience, so that our disposition of this proceeding would be contained in a single opinion. The only changes made by the opinion on remand are those reflecting our further consideration of Northeast's application in accordance with the Court's mandate. The discussion of Allegheny's applications is no more than a formal repetition of the findings which we made in our original opinions. It reflects no further consideration of Allegheny's applications and in fact there was no further consideration.

In view of the foregoing, Allegheny's present petition seeks reconsideration of a decision which became final about a year ago after the carrier's earlier petition for reconsideration was denied. It will therefore be dismissed (1) as untimely, and (2) as a successive petition for reconsideration.

4. We have considered the remaining matters set forth in the various pleadings filed by the parties and find that they do not alter the conclusions herein reached.

ACCORDINGLY, IT IS ORDERED:

1. That the motion of Northeast Airlines, Inc., for leave to file a reply to the Answer of Eastern Air Lines, Inc., to Northeast's Petition for Rehearing and Reconsideration be, and the same hereby is granted;

2. That the petitions of Northeast and of the International Association of Machinists and Master Executive Council of Northeast Pilots for rehearing and reconsideration be, and they hereby are denied;

3. That the petition of Allegheny Airlines, Inc., for reconsideration be, and the same hereby is dismissed.

BOYD, Chairman, GURNEY and GILLILLAND, Members, concurred in the above opinion and order. MURPHY, Vice Chairman, and MINETTI, Member, filed the attached joint concurring and dissenting opinion.

HAROLD R. SANDERSON
Secretary

(SEAL)

Murphy, Vice Chairman, and **Minetti**, Member, concurring and dissenting:

Upon special leave of the U.S. Court of Appeals for the First Circuit, Northeast has filed this Petition for Rehearing and Reconsideration of the latest order of the Board herein. It is not rested upon any of the contentions previously advanced. Without waiving the right to assert such contentions in the U.S. Court of Appeals, this petition is addressed only to two basic legal assertions:

1. That the recent order of the Board on remand is fatally defective as a matter of law and will remain so unless Northeast is afforded the opportunity contemplated by section 7(d) of the Administrative Procedure Act to refute the numerous subsidiary findings in the Board order relating to the Florida market which are based not on evidence in "the present record" but rather on selected facts, culled from other Board sources, of which the majority has taken official notice; and

2. That the said order insofar as it purports to deny Northeast's application for renewal of its authority to serve New England points to Philadelphia and Washington is not, and cannot, be legally justified.

Northeast avers that it is in a position to introduce evidence upon rehearing demonstrating beyond reasonable question that the Board's ultimate finding that Northeast has no reasonable prospects for financial success in its Florida operations and the Board's subsidiary findings which underlie such ultimate finding are erroneous, contrary to the weight of all available evidence, arbitrary and capricious. Specifically, Northeast states that it is prepared to introduce evidence which will show that:

1. As of May 8, 1964, the date of the decision of the Court of Appeals for the First Circuit reversing the Board's decisions and orders of August 15 and October 8, 1963, the traveling public in general and the travel agent industry in particular have begun, for the first time, to regard Northeast as a likely permanent carrier in the East Coast-Florida market.

2. Beginning in June, 1964, and continuing through October 31, 1964, Northeast accumulated system operating profits during the Florida market off-season for the first time in its eight years of Florida operations. This operating profit contrasts with an operating loss of more than \$4¼ million during the same five months of 1963 and very substantial operating losses during the same five months of each prior year.

3. Notwithstanding the substantial reduction in capacity which resulted either directly or indirectly from the Board's 1963 decisions to deny Northeast its Florida renewal, Northeast has had healthy participation in its principal Florida markets, and during the four months preceding this petition increased its traffic in those markets by nearly 40% over the level of the same months in 1963, as follows:

	Florida Passengers	
	1963	*1964*
August	19,495	21,620
September	11,382	14,749
October	8,497	16,346
November	12,818	19,289
4 Months' Totals	52,192	72,004

4. Contrary to the Board's conclusion that the Florida market cannot be expected to maintain a healthy, steady rate of growth, traffic in the total northeast-Florida market has increased since 1962 as follows:

Calendar year 1962	1,763,414 passengers
Calendar year 1963	1,866,601 passengers
12 months ended October 31, 1964	2,021,942 passengers

Period	*Increase in Passengers*	*Percentage*
1962—1963	103,931	5.9%
1963—1964	155,341	8.3%
1962—1964	259,272	14.7%[1]

Moreover, Northeast states that it is prepared to show through the testimony of marketing and financial experts evidence diametrically opposed to the Board's finding that Northeast's past difficulties are not due to the temporary character of the certificate on the route and that it will further show the devastating effect on its status which was wrought by the prior Board decisions to deny it a renewal of that certificate.

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[1] See also "Report on the Substantial Rise in Florida Market," extension of remarks of Congressman Claude Pepper of Florida, Cong. Rec. Feb. 8, 1965, p. A475 embracing article appearing in Aviation Week and Space Technology, Jan. 25, 1965. This article notes, among other things, that on January 3, 1965, Eastern set an all-time one-day record of 6,700 passengers moving out of Miami; and, National, on the same day, set an all-time record of boarding 4,846 passengers.

Trunkline carrier reports to the Board indicate that January 1965 traffic edged even higher after the vigorous growth of recent months. The seasonally adjusted traffic index for January climbed to a new high of 178.6 (1957-59 average month equals 100), up from 177.9 in December and well over the October level of 172.7. Expressing it in different terms, January traffic was running at an annual rate of 45.9 billion revenue passenger-miles, as compared with 45.7 billion in December and 44.4 billion in October. In a longer-term comparison, domestic trunk traffic for the month was 11.6 percent higher than in July and 15.4 percent above the same month a year ago. These figures indicate the continuation of the remarkably sharp uptrend in total traffic of the second half of 1964.

I

The hearing in this case closed on August 30, 1962, and the exhibits contained complete data only through the first quarter of 1962. To refuse a rehearing and to base a decision in this case upon later data selected from carrier reports (which we may properly notice) or materials untested by cross-examination in an effort to comply with the remand of the Court of Appeals is squarely in conflict with the Board's decision to reopen the record and proceed to further hearing on the much narrower, single question of carrier selection after remand of the *Southern Transcontinental Service Case* by the Court of Appeals for the District of Columbia Circuit. *Braniff Airways, Inc.* v. *C.A.B.*, 306 F. 2d 739 (1962). Order E-20129, October 28, 1963. Consequently, we reiterate our belief that a reopening of this proceeding is an essential prerequisite to any meaningful compliance with the direction of the U.S. Court of Appeals for the First Circuit as set forth in its opinion of May 8, 1964.

We are of the further view that the timely request of Northeast for the opportunity to amplify or show the contrary of facts officially noticed which constitute an essential ingredient of the Board's recent order on remand is well taken and should be granted.

In the present order, the majority again repeats its prior statements about the leveling off of the rate of growth in Florida traffic and about the prospects for a profitable operation by Northeast. In reply, we need merely refer to our dissenting views set forth in the December 1964 order on remand. Traffic continues to grow in sizeable numbers. Traffic levels exceed those which a unanimous Board found to require three carriers in 1956. Examiner Bryan found a need for a third carrier now in the present case even though he noted some maturing of the market as compared with growth rates prior to 1956.

As to Northeast's future prospects, we are convinced that the carrier can operate successfully once its authority is made permanent. This would be particularly true insofar as resolution of the equipment problem is concerned—an issue the majority cites to condemn Northeast's future prospects.

The simple fact of the matter is that the march of events since the majority's first decision of August 15, 1963 has overtaken us and the basic premises of that decision are clearly out-dated—even assuming they were valid when first articulated. That this is true is perhaps best illustrated by the majority's abandonment of the "strengthening for Eastern" argument. The situation simply is no longer what it was in 1963.

Obviously, the adjudication here involved is a critical one and is based upon keenly disputed facts which take on various dimensions in reaching a decision depending upon expansion or contraction of their context or scope or, most importantly, depending upon those facts selected for specific focus. The ultimate issue presented here is not just a matter of *important* consequence to the carrier such as, for example, whether carrier "A" or carrier "B" should be extended to a new point or selected for a route found required by the public convenience and necessity. Rather, it is a *vital* issue—according to Northeast, "the difference between life and death for Northeast Airlines as a certificated trunkline carrier."

In the circumstances of this case, therefore, section 7(d) of the Administrative Procedure Act and Rule 24(m) 2 of the Board's Rules of Practice in Economic Proceedings should constrain a grant of the petition for rehearing and reconsideration.

Section 7(d) is a direct product of the recommendations of the Attorney General's Committee on Administrative Procedure and is simply expressive of pre-existing constitutional rights. In observing the unusual importance of constitutional restraints in cases involving actions by administrative agencies, Mr. Justice Cardozo in *Ohio Bell Telephone Company* v. *Public Utilities Comm.*, 301 U.S. 292, 304 (1937), stated:

> "Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. Even in quasi-judicial proceedings their informed and expert judgment exacts and receives a proper deference from courts when it has been reached with due submission to constitutional restraints. . . . Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard' . . . of a fair and open hearing be maintained in its integrity . . . The right to such a hearing is one of 'the rudiments of fair play' . . . assured to every litigant by the Fourteenth Amendment as a minimal requirement . . . There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored."

No refined, legalistic interpretations of section 7(d) should restrain this Board from doing the right thing in the best interests of the traveling public. Clearly the right thing to do is grant Northeast's petition.

II

As Northeast has stressed in its petition for rehearing and reconsideration, its operating authority to all points south of New York is here involved. Its application for renewal covered services to Philadelphia and Washington which, as the carrier avers, cannot be disposed of on the basis of findings with respect to the Florida market, Caribbean vacations, jet seating capacity and utilization, or the ability of Eastern and National adequately to accommodate the traffic. A singular incongruity of the Board's deletion of Philadelphia and Washington is underscored by reference to page 1 of Appendix IX of the Board's order on remand which plainly shows:

1. that, for the four year period from 1959 through 1962, Northeast Airlines carried more passengers both between Philadelphia and Boston and between Washington and Boston than were carried by all of its competitors combined,

2. that in the Boston-Washington market, Northeast in 1961 carried *three* times as many passengers as all of its competitors combined and

3. that in 1962 Northeast in the same market carried more than *four* times as many passengers as were carried by its closest rival.

It is no answer to say that the contention of Northeast in this respect comes too late. The function of the Board, as the majority has stressed, is to develop a sound national transport system capable of fulfilling present and future needs of our air commerce, defense and postal requirements. Our role then is something more than an umpire in private disputations amongst air carriers. We must decide on the basis of the best information available what pattern of service is required in the public interest.

We are unable to comprehend the reasoning of the majority which would hasten to terminate all of Northeast's service at the New York City borderline and, hence, foreclose to much of New England the availability of single through-plane service to the important markets of Philadelphia and Washington—markets in which Northeast has been and continues to be a leading carrier. With a New England route system truncated at New York City the majority guarantees the continued dependence of Northeast upon subsidy for its operations. To argue and debate and grope for a level of profit available to Northeast in the Philadelphia and Washington markets is beside the point. The present record will not support the elimination of Northeast from service south of New York to Philadelphia and Washington and no amount of involved reasoning can supply this basic deficiency.

We adhere to our previously stated views that Northeast's temporary route should be made permanent and that its application cannot be denied on the basis of the present facts.

/s/ Robert T. Murphy

/s/ G. Joseph Minetti

Order of Court dated April 13, 1965

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

Docket 12285

No. 6220.

NORTHEAST AIRLINES, INC.,

Petitioner,

—v.—

CIVIL AERONAUTICS BOARD,

Respondent;

No. 6233.

SAME

—v.—

SAME;

No. 6445

SAME

—v.—

SAME;

No. 6506.

SAME

—v.—

SAME.

Order of Court dated April 13, 1965

Upon consideration of motion of petitioner for an order directing the Board to receive further evidence, brief in support thereof, and respondent's answer thereto,

It is ordered that this cause be remanded to the Board for further proceedings consistent with the opinion filed today; and in the meantime this Court will retain its jurisdiction.

By the Court:

/s/ Roger A. Stichfield
Clerk.

[Cert. cc. C.A.B.; cc. Messrs. Peterson and Ozment; courtesy cc. Messrs. Wait, Rooney and Hanify.]

Order of Court dated April 13, 1965

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6220.

NORTHEAST AIRLINES, INC.,
Petitioner,

—v.—

CIVIL AERONAUTICS BOARD,
Respondent;

No. 6233.

SAME

—v.—

SAME;

No. 6445

SAME

—v.—

SAME.

It is ordered that the schedule for filing briefs and record appendices herein, as fixed by order of this Court of March 15, 1965, be, and the same hereby is, cancelled; and any new schedule will be provided later by further order of Court.

By the Court:

/s/ ROGER A. STICHFIELD
Clerk.

[cc. Messrs. Peterson and Ozment; courtesy cc. Messrs. Wait, Rooney and Hanify.]

Opinion of the Court dated April 13, 1965

UNITED STATES COURT OF APPEALS

For the First Circuit

No. 6220.

Northeast Airlines, Inc.,

Petitioner,

—v.—

Civil Aeronautics Board,

Respondent;

No. 6233.

Same

—v.—

Same;

No. 6445

Same

—v.—

Same;

No. 6506.

Same

—v.—

Same.

Before Aldrich, *Chief Judge,* and
Maris* and Burger*, *Circuit Judges.*

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* By designation.

Henry E. Foley, Clarence I. Peterson, Loyd M. Starrett, Laurence S. Fordham, and *Foley, Hoag & Eliot* on brief for petitioner.

John H. Wanner, General Counsel, and *O. D. Ozment,* Associate General Counsel, on brief for respondent.

OPINION OF THE COURT

ON MOTION TO DIRECT THE BOARD TO RECEIVE FURTHER EVIDENCE.

Aldrich, *Chief Judge.* We are faced again with the troublesome and divisive question of the renewal of Northeast Airlines' temporary so-called Florida certificate. Following our remand to the Board for "further study . . . [and] an explicit statement . . ." *Northeast Airlines, Inc. v. CAB,* 331 F.2d 579, May 8, 1964, of its initial decision against Northeast, the Board on December 1, 1964, after receiving various briefs from the parties, but without reopening the evidence, rendered a new, and what it termed "complete recast" of its decision. It reached the same result, and by the same majority. After obtaining leave from this court on December 15, Northeast moved for rehearing and reconsideration. On March 5, by further opinion, this petition was denied. Northeast has now filed a further petition for review of the substantive decision. It has also filed a Motion for Order Directing the Board to Receive Certain Further Evidence. This motion is presently before us. Since, in our view, our allowance of the motion, in part, will constitute no ruling on the merits,[1] we shall be relatively brief.

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[1] It will, concededly, delay matters, which we do regret, but in the light of the admitted magnitude of the consequences involved we cannot think expedition the foremost consideration.

The December 1 opinion made a number of changes in the prior one. We shall not here recount, or assess them all.[2]

Before determining how, procedurally, it would decide the case the second time the Board reviewed the various possibilities and concluded to rest upon the old record plus "reports filed by the carriers since the formal closing of the evidentiary record and other stipulated materials."[3] It concluded that these matters did not "indicate sufficient change in circumstances to warrant reopening." "[O]ur primary concern in this proceeding is with the future, but . . . [w]e find nothing in this record which convinces us that Northeast's operation could be expected to be economic over an extended period of time." The Board based this conclusion upon operating figures through the first quarter of 1964, *i.e.*, current as of eight months prior to the date of its decision. These more recent figures, it said, "bear out our former findings." With respect to the possible effects of the impermanence of Northeast's certificate and the ups and downs of the renewal proceedings, discussed in our previous opinion, the Board made two references. First, in a footnote, it recognized that there "may have [been] some depressing effect," but expressed "doubt . . . that this was significant." Thereafter, in the body of its opinion, it stated flatly that it "cannot attribute Northeast's failure to any of these factors," listing these and some other alleged temporary circumstances.

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[2] Indeed, we expressly caution the parties, for the reason already indicated, to draw no conclusions as to our views, or final view on the merits from what we now say, or do not say, about the Board's various opinions and actions.

[3] We might remark, parenthetically, that we are not presently sure what this latter phrase included. The fault may be ours. However, we observe that National Airlines in its opposition to Northeast's Petition for Rehearing and Reconsideration argued for a broad and continuing interpretation of a prior stipulation. The Board's treatment of that argument was to say that it was not resolving it. In its March 5 opinion the Board stated that what it had looked at were "more recent operating results and traffic statistics."

The principal burden of Northeast's extensive petition for rehearing was that in considering further evidentiary matters on which to decide against it the Board had chosen some and disregarded others, and had afforded Northeast no opportunity to rebut or explain. In part Northeast relied upon Section 7(d) of the Administrative Procedure Act, 5 U.S.C. §1006.[4] The motion to remand requests the opportunity to make an affirmative showing of certain matters which Northeast asserts would have that effect, some of which it detailed in what might be regarded as an offer of proof, and some of which it did not. In general these consisted of more recent figures, of expert testimony of an interpretive and prognostic variety, and of testimony on the effect of the renewal proceedings on Northeast's traffic in 1963 and 1964. In addition, Northeast asserted that its original application was not filed upon an "all or nothing at all" basis, and that the Board should have considered and adumbrated the alternative of certificating it simply to Philadelphia and Washington.

The Board's opinion denying the petition for rehearing addressed to its December 1 opinion acknowledged that it had looked at matters occurring after its original decision,[5] but said that Section 7(d) was not applicable to that procedure. "To hold otherwise would lead to the anomalous result that an agency must hold a hearing in order to decide whether a hearing is warranted. We cannot accept this construction of the law." While the Board to some measure thereafter reviewed Northeast's contentions in a broader sense than this ruling implies, this ruling evidences such an extraordinary and serious misconception of its duties, or powers, as to affect our entire approach to the balance of the Board's opinion.

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[4] 5 U.S.C. §1006(d). "The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision . . . . Where any agency decision rests on official notice of a material fact not appearing in the evidene in the record, any party shall on timely request be afforded an opportunity to show the contrary."

[5] See fn. 3, *supra*.

Section 7(d) did not require a hearing "to decide whether a hearing is warranted." The Board might, or might not, the propriety of which would have depended upon other considerations, have decided to hold a hearing to assist it in making up its mind whether to reopen for full further hearings. Alternatively, the Board might have decided, whether properly or not would again have depended upon considerations quite apart from section 7(d), to consider nothing beyond the record as it originally existed. The Board rejected this last course, thereby escaping the criticism, legal or otherwise, that such a course might have evoked, and chose to look at some subsequent matters. It is to us crystal clear that as soon as it elected to look at such matters it could not pick and choose, at least to the extent of denying an objecting party the rights guaranteed, but by no means created, by section 7(d) to rebut not only those matters it looked to, but also the inferences which were sought to be drawn therefrom. Due process could permit no less.[6]

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[6] To take a simple hypothetical, if the Board were to say, we deny your petition because we note that you lost money in October, the petitioner must be afforded the opportunity to show not only that it did not lose money in October or that this was a bookkeeping matter read out of context, but also, for example, that it always lost money in October, so that the fact was of no significance, or that October proved to be the bottom

Next, the Board stated that Northeast was not really seeking to contradict or explain, but was merely contending that the record was unduly stale. On that basis it proceeded to accept or assume the correctness of certain matters contained in what it terms Northeast's "offer of proof," but found these to require no change in its conclusions. Other matters indicated in the motion it disregarded. Specifically, it dismissed in a footnote Northeast's proffer of expert testimony by citing *Market Street Railway Co. v. Commission*, 1945, 324 U.S. 548, 560. At the reference page the Court had made the following statement. "There is nothing to indicate that any consideration which could be advanced by an expert has not been advanced by the Company in argument and fully weighed." This does not appear to be the present situation.[7] And certainly if the Board's cryptic remarks meant that it would not believe expert testimony even if it added anything new, this was an inappropriate disposition. *Hassan v. Middlesex County National Bank*, 1 Cir., 1964, 333 F.2d 838, 841, *cert. den.* 379 U.S. 932.

Having opened the door to new data, the Board was obliged to take a full look. No useful purpose will be served in our discussing each aspect,[8] but we suggest that

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of a curve and lost significance by virtue of subsequent events. If the Board opens the door it cannot look at one occupant of the room and then shut the door and draw conclusions as to the total assembly.

[7] Moreover, *Market Street Railway* did not involve an attempt to offer expert testimony in rebuttal. The Court held only that a commission could reach a conclusion based on data which it was in a position to understand, without the aid of expert testimony interpreting it.

[8] One example, however, might be mentioned. We have already adverted to the Board's December 1 treatment of Northeast's contentions as to the depressing effects of its temporary certificate, and of these proceedings. In its March 5 opinion the Board justifies its refusal to receive evidence rebutting its confirmation of those conclusions by matters occurring after

fairness may require that Northeast's opportunity to rebut and explain what the Board has already noticed should extend to as recent developments as may be available at the date of the hearing or submission.

Our action, however, is subject to one qualification. Northeast's petition for rehearing filed December 15, 1964 is in two parts. The second relates to a claim first made, apparently, after our prior remand, that if it could not be certificated to Florida, at least it would be in the public interest that it be certificated to Philadelphia and Washington, D.C. The Board says this claim comes too late. We believe we would be looking at the Board's recent opinions with a very jaundiced eye if we were to conclude that its decision in this respect was either based upon, or supplemented by, considerations not of record at the close of the prior proceedings. We deny the present motion insofar as it relates to that issue. We neither order nor preclude the Board's further receipt of evidence with respect to it. For a number of reasons, including the fact that we wish to avoid any constraint upon the court when it reaches the petitions for review on the merits, the denial of this portion of the motion is without prejudice.

An order will be entered remanding this cause to the Board for further proceedings consistent with this opinion, and in the meantime our jurisdiction will be retained.

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its initial decision by referring to the fact that it had "already recognized that the temporary nature of the certificate may well have had some adverse effect upon it" (but had dismissed it as insignificant).

CAB Order E-22084 (April 26, 1965)

UNITED STATES OF AMERICA
Civil Aeronautics Board
Washington, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 26th day of April, 1965

New York-Florida Renewal Case } Docket 12285 *et al.*

Pursuant to a motion filed by Northeast Airlines in the proceeding for judicial review of the Board's decision on remand in this case, the Court of Appeals for the First Circuit has entered an order directing the Board to reopen the record for further proceedings to give Northeast an "opportunity to rebut and explain what the Board has already noticed", adding that this "should extend to as recent developments as may be available at the date of hearing or submission." The Court did not purport to pass on the substantive issues and did not, as a technical matter, set aside the Board's orders. Rather, it retained jurisdiction for consideration of the substantive issues after completion of the reopened hearings.

The Board has decided not to seek review of the Court's ruling. Accordingly, further administrative proceedings are necessary. While the Court's opinion does not specify the procedures to be followed by the Board at this point and it might thus be possible to comply with the Court's directive through some procedure short of evidentiary hearings, we believe that the matters raised by Northeast in its motion can best be explored by reopening the record for further hearings. Moreover, since a hearing limited to those matters would in any event be extensive, we have concluded that it is in the public interest to utilize the reopened proceeding for a complete review of the issues and pattern of service encompassed in the proceeding originally.

While this proceeding involves the interest of Northeast in renewal of its certificate, there are also important public interest questions of concern to the Board in carrying out the objectives of the Act. The temporary certificate of Northeast having expired in 1962, the proceeding before the Board involves the question of whether the public convenience and necessity requires the certification of a third carrier in the East Coast-Florida market and, if so, the selection of the carrier.[1] While it is true that other applicants in the proceeding did not choose to appeal the Board's denial of their applications, the public interest in the development of a sound national air transportation system can best be served by giving consideration to all qualified applicants who may wish to apply for the route.[2] In short, since the case is again before the Board for hearing, we are of the opinion that all aspects of the public convenience and necessity issues presented in this case should be open for further consideration and that the

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[1] The fact that Northeast, as a renewal applicant, may stand in a preferred position does not mean that other applicants cannot be considered. See, *e.g., Western Air Lines* v. *Civil Aeronautics Board*, 184 F.2d 545 (C.A. 9, 1950), in which the Court recognized that the *Ashbacker* rule is applicable to proceedings for renewal of temporary certificates.

[2] In addition to the basic issue of East Coast-Florida service, additional but related issues involving service in the commuter markets are also encompassed within the scope of the proceeding.

Board should be in a position to consider those issues afresh in the light of the most recent data. See *Federal Communications Comm'n* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 145-146 (1940); *Fly* v. *Heitmeyer*, 309 U.S. 146, 147-148 (1940); *Delta Air Lines* v. *Civil Aeronautics Board*, 280 F.2d 636 (C.A.D.C. 1960), *cert. denied*, 364 U.S. 870. Accordingly, we have decided to reopen the record completely.

In the normal case where a reviewing court has set aside a Board order in a licensing proceeding, the Board is free to take such action as it deems appropriate in the public interest without further leave of court. Here, however, the Board's orders have not been set aside and, moreover, the Court of Appeals has retained jurisdiction of the review proceeding. Thus, to effectuate our purpose, it will be necessary for the Board itself to vacate the orders under review, subject to any necessary permission from the Court. See *Anchor Line, Ltd.* v. *Federal Maritime Comm'n*, 299 F.2d 124 (C.A.D.C. 1962). Accordingly, we will rescind our orders of December 1, 1964 and March 5, 1965, and direct further proceedings herein, effective as of the date of any court order dismissing the appeals or remanding the case to the Board.[3]

Promptly after the effective date of this order, a notice of prehearing conference will be issued. Unless such notice otherwise specifies, any motions with respect to the scope of the issues or for consolidation of applications shall be made no later than the date set for the prehearing conference. Also to be considered at the prehearing conference will be the question of the use which should be made of the existing record, *i.e.*, whether it should merely be supplemented or whether, instead, it would be best to have a complete retrial.

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[3] For record purposes we will also formally rescind the two orders previously set aside by the Court.

CAB Order E-22084 (April 26, 1965)

It Is Therefore Ordered:

1. That Orders E-19910, E-20073, E-21550, and E-21872 be and the same hereby are rescinded, subject to such approval of this rescission as may be deemed to be necessary by the United States Court of Appeals for the First Circuit.

2. That appropriate application be made to the Court of Appeals for the First Circuit in *Northeast Airlines* v. *Civil Aeronautics Board,* Nos. 6220, 6233, 6445, 6506, and in the similar cases Nos. 6507 and 6517 filed by Master Executive Council of Northeast Pilots and the International Association of Machinists, for dismissal or remand, or such other appropriate action by said Court, if any, as may be required in order to permit the Board to proceed in accordance with the findings contained herein.

3. That the aforesaid rescission shall be effective upon the date of any order issued by the Court of Appeals for the First Circuit dismissing or remanding the aforesaid appeals or otherwise indicating or giving permission for such action.

4. That promptly after the effective date of such rescission of the aforesaid orders, the Chief Examiner shall cause a notice of prehearing conference to be issued, and thereafter the case shall be processed on an expedited basis.

By the Civil Aeronautics Board:

Harold R. Sanderson
Secretary

(Seal)

Order of Court, dated April 28, 1965

UNITED STATES COURT OF APPEALS

For the First Circuit

No. 6220.

NORTHEAST AIRLINES, INC.,

Petitioner,

—v.—

CIVIL AERONAUTICS BOARD,

Respondent.

No. 6233.

SAME,

—v.—

SAME.

No. 6445.

SAME,

—v.—

SAME.

No. 6506.

SAME,

—v.—

SAME.

Order of Court, dated April 28, 1965

No. 6507.

**Master Executive Council of Pilots
of Northeast Airlines, Inc.,**
Petitioner,

—v.—

Same.

No. 6517.

International Association of Machinists,
Petitioner,

—v.—

Same.

Without otherwise passing on the pending motions of Eastern Air Lines, Inc., and National Airlines, Inc., for leave to intervene,

Leave is hereby granted to each of them to file by 10 a.m. on Monday, May 3, 1965, typewritten copies of any memorandum it wishes in response to the motion of respondent to dismiss or remand.

By the Court:

/s/ Roger A. Stinchfield
Clerk.

[cc: Messrs. Peterson, Ozment, Wait and Rooney.]

Opinion of the Court, dated May 11, 1965

UNITED STATES COURT OF APPEALS

For the First Circuit

Nos. 6220, 6233, 6445, 6506.

Northeast Airlines, Inc.,

Petitioner,

—v.—

Civil Aeronautics Board,

Respondent;

No. 6507.

Master Executive Council of Pilots
of Northeast Airlines, Inc.,

Petitioner,

—v.—

Civil Aeronautics Board,

Respondent;

No. 6517.

International Association of Machinists,

Petitioner,

—v.—

Civil Aeronautics Board,

Respondent:

Before Aldrich, *Chief Judge,* Breitenstein,*
Circuit Judge, and Gignoux, *District Judge.*

OPINION ON MOTIONS—MAY 11, 1965.

Opinion of the Court, dated May 11, 1965

ALDRICH, *Chief Judge.* Following our decision of April 13, 1965, remanding to the Board to permit Northeast to offer further evidence in the light of the evidence which the Board had taken, or noticed, *sua sponte,* F.2d , the Board entered a new order. This April 26 order revoked all outstanding decisions of the Board, both with respect to Northeast and as to whether there should be three permanently certificated carriers on the Florida route, stating that it "reopened [the] proceeding for a complete review of the issues" and "to consider those issues afresh in the light of the most recent data."[1] It appropriately, *Anchor Line, Ltd.* v. *Federal Maritime Commission,* D.C.Cir., 1962, 299 F.2d 124, requested us to remand for that purpose, giving our assent, if we believe it necessary, and, preferably, relinquishing our jurisdiction.

There were pending on April 13 motions by Eastern and National to intervene. These we denied, *sub silentio,* to the extent that they applied to Northeast's limited petition to remand, so far as the formalities were concerned, but we did read and fully consider the extensive briefs which these carriers had filed on this issue before the Board, and which were in the record presented to us. It has been our position, which the Supreme Court has refused to disturb, *cert. den.* 376 U.S. 931 (1964), that so long as these carriers are precisely aligned with the Board, formal intervention is inappropriate. However, when the Board entered its April 26 order this alignment terminated. We accordingly entered an order to the effect that "without otherwise passing" on their motions to intervene, these carriers would be permitted to respond to the Board's present request.

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* By designation.

[1] The Board did not expressly state whether it would consider Northeast's alternative request to be certificated to Philadelphia and Washington, but nothing presently turns on this.

Briefly, the positions of the various carriers[2] are as follows. Northeast wishes us to grant such leave as may be necessary, but requests that it be "without prejudice to the pending proceedings for judicial review" and that this court "retain its jurisdiction and merely stay the pending judicial review proceedings." Eastern asserts that it was aggrieved by our April 13 order, that it wishes to be permitted to intervene, that it intends to petition for certiorari, and that it desires a stay of all further proceedings (not the stay of "review proceedings" that Northeast wishes) pending the Supreme Court's determination thereof. National's position is somewhat the same as Eastern's, except that it is undecided as to whether it will apply for certiorari, and as to whether it wants a general stay.

Although National appears to feel otherwise, the Board's order goes beyond our April 13 order. Nonetheless, we do not consider the Board's order inappropriate, and if necessary for us to assent thereto, we do so. Furthermore, we think its action fully within the Board's discretion and not subject to review. We do not, however, wish to stand in the way of Eastern and National, if they wish to seek review, and their motions to intervene are for that purpose allowed. We state, however, that any delay in the Board's further procedure is to be in its discretion, and that if, in connection with any petition for certiorari, whether with respect to our decision of April 13, or to our present decision, the petitioners wish the Board's further proceedings to be stayed, they must apply first to the Board, and next to the Supreme Court or to a justice thereof. We would not ourselves overrule a decision on the part of the Board to proceed during the pendency of such petitions.

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[2] There are before us petitions on behalf of certain of Northeast's employees, but these raise no further matters.

We now turn to the question whether our assent to the Board's order, and consequent remand, should be accompanied by a retention, or a relinquishment, of our jurisdiction. None of the reasons asserted for the retention of our jurisdiction seems sound. It is not for us to supervise the manner in which the Board is to take evidence or otherwise conduct itself. It is true that in connection with our original remand, 331 F.2d 579, we retained jurisdiction. That order did not necessarily involve in full retrial. Furthermore, it was imposed upon, in a sense, an unwilling Board, which might, not necessarily improperly, adhere to some or all of the matters it had originally decided with a so-to-speak closed mind. The Board has now renounced any such approach and states that it wishes to reconsider the case *de novo*. We also, naturally, assume that it recognizes the obligation to continue Northeast's temporary operations pursuant to 5 U.S.C. §1008(b).[3] We see neither the need, nor the basis, for us to retain jurisdiction.

An order will be entered, to take effect ten days after the date of this opinion, approving the order of the Board of April 26, 1965, remanding the cause to the Board, and relinquishing our jurisdiction.

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[3] If we have misconstrued the Board's position in any particular, it should promptly file a motion for reconsideration of this opinion and decision.

Order of Court, dated May 11, 1965

UNITED STATES COURT OF APPEALS

For the First Circuit

Nos. 6220, 6233, 6445, 6506.

Northeast Airlines, Inc.,

Petitioner,

—v.—

Civil Aeronautics Board,

Respondent;

No. 6507.

Master Executive Council of Pilots
of Northeast Airlines, Inc.,

Petitioner,

—v.—

Civil Aeronautics Board,

Respondent;

No. 6517.

International Association of Machinists,

Petitioner,

—v.—

Civil Aeronautics Board,

Respondent.

Upon consideration of motions, answers and memoranda,

It is ordered that the order of the Board of April 26, 1965, be, and the same hereby is, approved; and

Order of Court, dated May 11, 1965

Eastern Air Lines, Inc., and National Airlines, Inc., are granted leave to intervene; and

The cause is remanded to the Board; and our jurisdiction is relinquished in all six above-entitled cases;

All in accordance with the opinion filed herein today; and further

This order will take effect on May 21, 1965.

By the Court:

/s/ Roger A. Stinchfield,
Clerk.

A true copy:

Attest: /s/ Roger A. Stinchfield
Clerk.

[Cert. cc: C.A.B., and Messers Peterson, Ozment, Wait, Rooney and Hanify.]